MODERN
BUSINESS PRACTICE

MODERN BUSINESS PRACTICE

A COMPREHENSIVE PRACTICAL GUIDE AND WORK OF REFERENCE FOR OFFICE WAREHOUSE EXCHANGE AND MARKET

Prepared by many Specialists under the Editorship of

F. W. RAFFETY

Barrister-at-Law

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SIR HENRY DOULTON (1820–97); born in Lambeth, London; greatly developed his father's pottery business in Lambeth, now Doulton & Co., Ltd.; knighted, 1887.

JOHN ELDER (1824–69); born at Glasgow; built up the great shipbuilding and engineering business that began as Randolph, Elder, & Co. in 1860, and is now the Fairfield Shipbuilding & Engineering Company, Ltd.; a notable inventor.

GEORGE RICHARDS ELKINGTON (1801–65); born in Birmingham; with his cousin Henry developed the modern electroplating industry in his native city. The business is now Elkington & Co., Ltd. (*Photo. from a Lithograph by G. B. Black.*)

KIRKMAN FINLAY (1773–1842); born in Glasgow; a founder of Glasgow's East India trade; Lord Provost of Glasgow, 1812–15. (*Portrait from a Painting by John Graham-Gilbert, R.S.A.*)

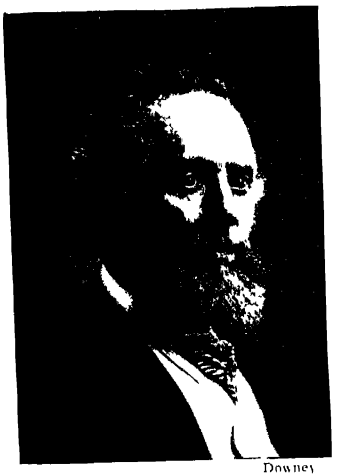
JOSEPH STORRS FRY; Chairman of J. S. Fry & Co., Ltd, Bristol, the well-known manufacturers of cocoa and chocolate.

LORD FURNESS of Grantley; born Christopher Furness at West Hartlepool, 1852; knighted, 1895, raised to Peerage, 1910; head of Furness, Withy, & Co., Ltd., shipbuilders and engineers, and of the Furness Line; M.P. (L.) for the Hartlepools, 1891–95, 1900–10.

SIR JOHN GLADSTONE, BART. (1764–1851); born at Leith; became a corn merchant in Liverpool and engaged in East and West Indian trade; created a Baronet, 1846. His fourth son was the Right Hon. W. E. Gladstone. (*Portrait copied from Painting by John Graham-Gilbert, R.S.A.*)

VISCOUNT GOSCHEN (1831–1907); born George Joachim Goschen; raised to Peerage, 1900; President of Poor Law Board, 1868–70, First Lord of Admiralty, 1871–74, Chancellor of Exchequer, 1887–92, First Lord of Admiralty, 1895–1900; M.P. (L.U.) for St. George's, Hanover Square, 1887–1900; Author of *The Theory of the Foreign Exchanges*, etc.

LORD CLAUD JOHN HAMILTON; born second son of first Duke of Abercorn, 1843; in Army for a time; Chairman of Great Eastern Railway; M.P. (C.) Londonderry, 1865–68, King's Lynn, 1869–80, Liverpool, 1880–88, South Kensington, from 1910.



Downey

SIR HENRY DOULTON

JOHN ELDER

From Lithograph

GEORGE R ELKINGTON

From Painting

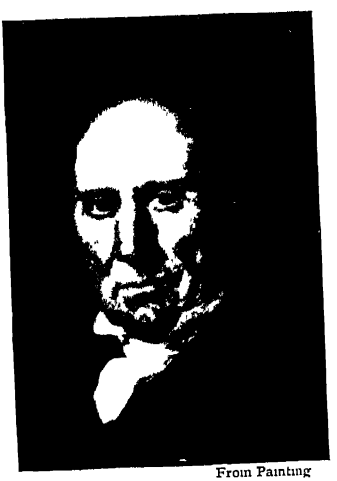
KIRKMAN FINLAY

Holmes, Clifton

JOSEPH S FRY

Yeoman, Hartlepool

LORD FURNESS



From Painting

SIR JOHN GLADSTONE, BART

Russell & Sons

VISCOUNT GOSCHEN

Swaine

LORD CLAUD J. HAMILTON, M P.

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FOREWORD

HOW TO BUILD UP A SUCCESSFUL BUSINESS

By Sir THOMAS J. LIPTON, Bart., K.C.V.O.

At the beginning of my career, when my first shop in Glasgow was opened and I acted as my own salesman, and then my own errand boy after the shop closed, I laid down a few hard-and-fast rules. These were the recipes for my success. They were: Be honest. Keep pushing. Use judgment. Treat your customers well.

To present-day young business men I would give the following advice:—

First, beware of strong drink. Remember corkscrews have sunk more people than cork jackets will ever save.

The next is civility. Treat rich and poor alike. The poor man's twenty shillings is as good as the rich man's sovereign. The workman's wife with her basket on her arm is entitled to as much respect as the lady who comes in her carriage. And as an illustration of the benefit of humility I will tell you the following story of Benjamin Franklin, who, when Ambassador for the United States at the French Court, speaking to a young man, said, "The last time I saw your father he received me in his study. As I was leaving he showed me a short way out of the house through a narrow passage crossed by a beam overhead. He suddenly cried, 'Stoop! stoop!' I did not understand what he meant until I felt my head thump against the beam. He was a man who never failed to give good advice. 'You are going,' he said, 'and have to go through the world. Stoop as you go through it, and you will miss many hard thumps.'"

Thirdly, I would recommend punctuality, which is said to be the soul of business. It is said of Charles Lamb, who at one time held a Government appointment, and who was proverbial for coming in late, that one morning, being later than usual, and his superior finding fault, Lamb offered this excuse, "If I do come late in the morning I try to make up for it by leaving early in the afternoon." This was a good joke, but hardly the style of business to gain promotion. If you stick to business, business will stick to you.

These three essentials for success may be summarized as temperance, civility, and

punctuality. A man who is not equally civil and polite to every client and customer, whether he be rich or poor, has little chance of becoming a successful man. Then he who is not punctual is generally the man who does not care or trouble to stick close to his business.

To foster your business concern like a child, to know it cannot thrive by itself; to keep an ever-watchful eye on its thousand details; to be its very shoestrings, so to speak; and, above all, to do these things oneself, and not leave them to the less interested—to do the work that others would do only a little less well—all this is the way to make the baby of a business thrive and come to a flourishing maturity.

I am often asked why we as a nation are beaten in trade. Speaking from my knowledge of America, I would say in that case it is owing to their more up-to-date methods. They are our most serious and powerful competitors. Young men are sent to all parts of the world to supply people with things they want. Their Consular service is far superior to ours. The Consuls representing the United States are chosen because of their business knowledge, ours are selected chiefly because of their social standing or political influence, and in most cases British Consuls pay more attention to the social aspects of their posts than to the commercial concerns. In certain ports I have come across absolute ninnies representing us, while their American confrères, all "hustlers", carried off the trade that formerly added to the wealth of Britain.

I consider the American boy is ahead of the British boy. I find that in America the managers of large concerns are often very youthful. In Britain their youth would be a disqualification; it would not command respect. That I believe to be a great error of policy in the affairs of a nation, a business firm, or a family. I hold, therefore, that it would be a good thing to send every British boy to America when he is seventeen, and to keep him there for a couple of years. My experiences in the States, to which I first went when I was fifteen, were the best commercial training I ever had. I find that apprenticeship still stands by me, and it helped me more than anything else to the position I now occupy.

The value I place on industry in building up a concern, and how I believe in devoted hard work at the thing once for all accepted as a man's "calling" in life, may be seen from the fact that even now I generally work from nine in the morning to ten at night. It was said by men who have a right to speak, that labour is never anything but painful, however willingly undertaken and courageously done. But I think this was the conclusion of men who had one of the two kinds of labour to do —the entirely physical and the entirely mental.

Hard work has its own liberty, its own enlargement, its own relaxation, and also its own romance. So the man who makes a great business must put himself into it. Work is the only talisman.

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(Continued)

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Dutch Colonial Possessions—Honduras—Italy—Japan—Liberia—Mexico—Montenegro—Morocco—Nicaragua—Norway—Oman—Panama—Paraguay—Persia—Peru—Portugal—Rumania—Russia—Salvador—Servia—Siam—South America—Spain—Sweden—Switzerland—Turkish Empire—United States of America—Uruguay—Venezuela—West Indies.

DUTCH COLONIAL POSSESSIONS

Dutch East Indies

The Dutch colonies in the East Indies consist of the islands of Java, with Madura, Sumatra, Celebes, the Moluccas, the Sunda Islands, and parts of Borneo and New Guinea. The total area is 736,400 sq. miles, and the total population is about 36,000,000, of whom about 29,000,000 are in Java. Of the population, about 75,000 are European, mostly Dutch. The capital and centre of commerce in the Dutch East Indies is Batavia, with a population of about 140,000. It was the entrepôt of the East Indies before the founding of Singapore. Batavia is reached by the ships of the Nederland Royal Mail Line from Amsterdam via Southampton and Singapore; by the Rotterdam Lloyd Steamship Company from Rotterdam via Southampton; and by other lines from other eastern ports. There is no direct steamer service between the United States and the Dutch East Indies; goods are transhipped at Liverpool or Singapore. There are about 1400 miles of railway in Java, 200 in Sumatra, but none in the other islands. The principal products and articles of export are sugar, coffee, cinchona, tea, rice, indigo, tobacco, and tin. Coal and mineral oil are worked, and there is some industrial activity which gives an output to the rice mills, soap factories, distilleries, and soda-water factories of Java. The exports have an annual value of about £30,000,000, about 80 per cent of which is sent to Holland. Exports of Java to Britain fluctuate very much, sometimes exceeding £2,000,000 in one year and sometimes being below £1,000,000, this condition being due to great fluctuations in the sugar and grain trade. Apart from these commodities, the chief Javan produce to enter the British market consists of Peruvian bark, nuts and kernels for oil expression, pepper, teak, canes and sticks, gum, raw hides, tin, manganese, and tea. British imports from Dutch Borneo sometimes exceed £100,000 annually, and are principally petroleum and cutch. From other Dutch possessions in the Far East British imports fluctuate very much, and have been nearly £1,000,000, this fluctuation being due to petroleum oil, which is the principal article, other items being shells, feathers, gums, canes, and paraffin wax.

The total imports of the Dutch East Indies have a value of about £20,000,000 annually, of which some £4,000,000 worth goes from Britain, nearly all to Java. The value of British cottons imported by Java is over £2,000,000 annually, and the other principal articles are manure, iron, machinery, biscuits, chemicals, hardware, linen, woollens, copper, lead, oilcloth, confectionery, and soap. To Dutch Borneo Britain sends principally machinery and metals, and

to other Dutch West Indian possessions cotton goods, iron, machinery, biscuits, soap, and manure to the value of over £500,000 annually. In accepting these figures it must be remembered that Java is the chief market and great distributing centre, so that not all the imports credited to Java are for consumption in that island. Similarly, much British produce and manufactures reach the Dutch islands from Singapore, and do not appear in the records of direct trade between Britain and the Dutch East Indies.

In the Dutch East Indies commercial travellers, as such, must pay a tax of 2 per cent on their income. All foreigners entering any of the territories must report themselves to the chief of the local administration within three days of arrival, and receive a certificate of admission conferring the right to reside for six months in all ports open to trade. The period is extended upon application. A deposit must be made in respect of samples of value entering the country, and this is refunded upon re-exportation before the expiry of the time for which permission of residence is given.

British Consulates.—

Batavia (Java), Consul.
Macassar (Celebes), Vice-Consul.
Medan (Sumatra), Vice-Consul.
Samarang, Vice-Consul.
Sourabaya, Vice-Consul.

Dutch West Indies

These consist of Dutch Guiana or Surinam (with an area of 46,060 sq. miles and a population of about 80,000) and the colony of Curaçao, which consists of the island of Curaçao and some smaller islands (with an area of 403 sq. miles and a population of about 55,000). The chief town is Paramaribo, with a population of 35,000, in Dutch Guiana. The ports of the Dutch West Indies are reached from Amsterdam by the steamers of the Royal Dutch West India Mail, and by local steamers from the other West Indian ports. The Royal Dutch West India Mail Line calls at New York, and thereby gives the United States direct steamship communication with Dutch Guiana. There is a regular steamship service between New York and Curaçao by the Red D Line. The principal products and exports of Dutch Guiana are sugar, cacao, bananas, coffee, rice, maize, rum, and molasses; of Curaçao they are maize, beans, pulse, salt, phosphate, and cattle. There is some gold-mining in Guiana. The value of exports from Dutch Guiana is about £500,000 annually, and only about £100,000 worth comes to Britain. Curaçao's exports are worth about £100,000 annually. From Curaçao Britain's purchases have a value of about £50,000 annually, the chief articles being hats, phosphate, and hardwoods. The imports of Dutch Guiana are worth about £600,000 annually, and goods to the value of about £60,000 are contributed by Britain, the principal items being cotton goods and iron. The imports of Curaçao have a value of about £300,000 annually, about £40,000 worth—chiefly cotton goods and woollens—being from Britain.

Travellers in the Dutch West Indies are advised to provide themselves with passports as evidence of nationality.

In Curaçao there are no regulations affecting commercial travellers. Samples, being usually of little or no value, are not subject to duty, but goods offered for sale remain under the control of the Customs officers until the duty is paid. In Dutch Guiana the only visiting commercial travellers who are taxed are those dealing in spirits, and they must pay the same taxes as the resident traders in spirits. Security must be given for the payment of duty on samples of value but there is no time limit to re-exportation.

British Consulates.—

Paramaribo, Consul and Vice-Consul.
Nickerie, Vice-Consul.
Curaçao, Consul.

HONDURAS

(See also Central America)

Honduras has a littoral on the Gulf of Mexico and on the Pacific Ocean. Most of the inhabitants are of pure or mixed Indian blood, 20 per cent of them being uncivilized, full-blooded Indians. The capital is Tegucigalpa (population, 35,000), and the other chief towns are Juticalpa (18,000), Nacaome (12,000), La Esperanza (12,000), Santa Rosa (11,000), and Choluteca (11,000). The chief Pacific port is Amapala (1100), and a new port of San Lorenzo; on the Atlantic the chief ports are Puerto Cortez (2500), Omoa (1000), Truxillo, and La Ceiba. There are a few short railways, but most of the transport is by mules and ox teams.

Resources

Agriculture is making slow progress toward development. The chief agricultural products are bananas, coconuts, rubber, copper, sarsaparilla, tobacco, sugar, maize, oranges, and lemons. Cattle

breeding is an important industry. The forests have valuable mahogany and cedar, and are being exploited. Honduras is the richest of the isthmian states in minerals. The minerals worked are silver, gold, copper, and lead; and those known to exist, but not yet worked, include coal, platinum, zinc, iron, antimony, and nickel. The country has great mineral wealth, but its development is hampered by the absence of good transport facilities.

The exports have a value of less than £500,000 annually, and almost 90 per cent reaches the United States. The only items of importance are bananas, metallic ores, cattle and hides, bar silver, coconuts, mahogany and cedar, and rubber. Britain imports from Honduras a little coffee, but hardly anything else. There are very few domestic industries—only cigars, flour, straw hats, and candles.

Imports

The value of the imports is about £500,000 annually, the principal items being cotton goods, breadstuffs, and provisions. Over 60 per cent is sent by the United States, and less than 20 per cent by Britain, whose share consists chiefly of cotton goods. Food being such an important item in the imports of Honduras, Britain cannot hope to increase her proportion materially.

No certificates of origin are necessary for goods imported into Honduras, but all goods must be accompanied by three copies of invoice, legalized by a consul of the republic.

Local Regulations

The silver *peso* or dollar of 100 cents fluctuates in value, but is generally about 1*s.* 8*d.*, and the gold dollar is worth 4*s.*

British Consulates.—

Amapala, Consul.
Omoa and Puerto Cortez, Consul.
San Pedro Sula, Vice-Consul
Tegucigalpa, Consul-General and Consul.
Truxillo, Consul.
La Ceiba, Vice-Consul.

ITALY

Italy has an area of 110,600 sq. miles, so that it is a little smaller than the United Kingdom, with a population of about 34,000,000. The capital is Rome (575,000), and the other chief cities are Naples, 596,000; Milan, 584,000; Turin, 371,000; Palermo, 319,000; Genoa, 275,000; Florence, 227,000; Venice, 160,000; and Bologna, 165,000.

Shipping and Railways

The most rapid routes to Rome and the other cities of Italy are by Paris and Mâcon to Turin, and by Paris, Basle, and Lucerne to Milan. There is direct steamer communication between Southampton and Genoa by the Norddeutscher Lloyd Line; between London, Plymouth, and Naples by the Orient Line; and between Hull and Naples by the Wilson Line. The various ports of Italy can be reached from Malta and other Mediterranean ports by the Adria Line.

The steamer services between the United States and Italy are as follows:—

Adria Line (irregular), Venice to United States ports; Anchor Line (fortnightly), Venice, Naples, Genoa, and New York; Compagnie Cyprien Fabre (irregular), Naples and New York; Compagnie National de Navigation (irregular), Naples and New York; Compagnia Transatlantica (regular), Genoa and New York; Creole Line, Genoa and New Orleans; Dominion Line (regular), Naples, Genoa, and Boston; Fast Italian Line (regular), Naples, Genoa, and New York; Hamburg-America Line (twice monthly), Naples, Genoa, and New York; Mediterranean & New York Steamship Company, Venice and New York; Navigazione Generale Italiana (regular), Genoa, Naples, and New York; North German Lloyd (regular), Naples, Genoa, and New York; Phelps' Line (every ten or twelve days), Sicilian ports and New York, Boston, and New Orleans; Prince Line (fortnightly), Leghorn, Genoa, Naples, and New York.

There are over 10,000 miles of railway in the kingdom, and four-fifths are state-owned.

Resources

Of the total area of Italy, over one-seventh is forest land, which is tended by Government or under Government assistance. Of the forest timber used for building and manufacture, quite one-third is hardwood. Thirty per cent of the total area is under corn crops, and of this proportion more than half is under wheat, over one-fifth under maize; and the other crops, in order of importance, are beans and peas, oats, barley, rice, and rye. Vineyards cover over 9,000,000 acres, olive yards over 2,500,000, chestnuts over 1,000,000, and the less important crops are potatoes, sugar beets, flax, hemp, and tobacco. By agricultural

associations, or by improved agricultural practice, particularly in the use of chemical fertilizers, the industry is experiencing steady and permanent improvement. Yet the output of cereals has not risen to the height of the internal demand, and wheat, maize, rye, oats, and barley are still imported.

The stock animals number about 18,000,000, over one-third being sheep, almost one-third cattle, one-tenth pigs, one-tenth goats, and the remainder asses, horses, and mules. Cattle, sheep (which are decreasing), and pigs are exported largely. Poultry-farming is an industry that exports about £8,000,000 worth of produce annually, one-third of which is eggs and the remainder poultry. Silk culture flourishes all over Italy, but to its greatest extent in the northern provinces.

The Italian fishing fleet contains about 26,000 vessels and employs about 100,000 fishermen, of whom only 6 per cent follow deep-sea fishing. These include coral and sponge fishers.

The fruits of special interest in the Italian export trade are oranges, lemons, limes, dates, almonds, nuts, hazel nuts, chestnuts, grapes, and figs. The vegetables are chiefly potatoes and tomatoes. Tomatoes and various fruits and vegetables are exported preserved.

The output of Italian mines has an annual value of about £4,000,000, and that of Italian quarries about £2,000,000, the latter sum including about £800,000 worth of marble. About 40 per cent of the total value of the output of mines is for sulphur, and 30 per cent is for zinc and lead. The remaining 30 per cent comprises iron, copper, mineral fuel (coal and lignite), cupreous and ferreous pyrites, asphalt and bitumen, iron, manganese, salt, graphite, and boric acid.

The sugar industry of Italy, although its output places the country only seventh among European countries, is established on a sound footing, and has about forty factories. The textile industries are large and important. Domestic production gives employment to about 300,000 looms. In textile factories silk takes premier place, and employs about 200,000 hands, followed by cotton with about 150,000, woollens with about 40,000, and linen and hemp with about 30,000.

Of food products, butter and cheese are made in large quantities, and butter especially is increasing rapidly as an article of export. Wine manufacture and olive-oil expression, also the expression and distillation of essences of orange, mandarine, bergamot, and lemon, are important industries whose products find a wide external market. The other chief industries are the manufacture of straw and other hats, marble work, chemicals, furniture, motor cars, the working of coral, and certain departments in metals and machinery.

Exports

The exports of Italy are about £70,000,000 per annum in value. The chief purchasing countries, with their proportions of the total value in the order named, are as follows: Switzerland, Germany, United States, France, Argentina, United Kingdom, and Austria, the last three about equal. By far the most important export is silk goods, amounting to more than 40 per cent of the total export value. The principal form is thrown silk, but pure silk manufactures account for about £2,500,000. The cotton exports, chiefly manufactures, exceed £4,000,000; but other textile manufactures are insignificant, only raw hemp and flax figuring for about £2,000,000 annually. The fruit exports are almonds, oranges, and lemons. Almonds exceed £1,000,000, and the others have an aggregate of more than that sum. Butter and cheese account for £2,000,000, and eggs and olive oil for rather more. The other items, about a million sterling, are hides and skins, marble and alabaster (including manufactures), rice, sulphur, wine, and zinc ore. Coral, cattle, meat, and straw plait are the only other items of moderate importance.

British imports from Italy have a value of over £6,000,000 annually, and the most important items are silk manufactures, thrown silk and raw silk, hides, lemons, limes, and citrons, eggs, hemp, cheese, carriages, vegetables, chemicals (especially brimstone and tartaric acid), marble, olive oil, sumach, zinc ore, straw plait, and poultry.

Imports

Italy's imports exceed £100,000,000 annually, and the principal contributing countries are Germany, Britain, United States, Austria, France, and Russia. The principal commodities imported are raw cotton, with a value of over £10,000,000, coal and coke, boilers and machinery, raw silk, iron and steel, timber, wheat, wool, fish, hides, silk, cocoons, scientific and electrical instruments, cattle, woollen goods, copper, brass, and bronze, horses, rubber, stones and non-metallic minerals, silk manufactures, hides, tobacco, and railway carriages.

British produce and manufactures exported to Italy, according to British official figures, have a value of about £14,000,000, and 40 per cent of this value is for coal. Machinery approaches £2,000,000 and iron exceeds £1,000,000. The important classes otherwise are sulphate of copper, soda compounds, cotton manufactures, fish, copper, ships, wool, and woollen goods. Articles of minor

importance are arms, bricks, rubber goods, cycles, coal products, earthenware, grease and tallow, hardware, leather, linen goods, manure, medicines, copper, seed oil, painters' colours, and paraffin wax and stationery.

Italy is systematically canvassed by German travellers, armed with a knowledge of the language and with catalogues in the currency, weights, and measures of the country, and authorized to give generous credit.

It is sometimes absolutely necessary, to secure an order, to be prepared to forward goods freight and duty free. There are several forwarding agents who receive goods from on board ship, pay the duty on them, and forward them to their destination. The best way is to send samples, or at least a detailed description, of the article which has been ordered freight and duty free to one of the forwarding agents, and ask him to quote a "forfait", which must include duty and every other expense from on board the vessel to the destination of the goods; in this way the exporter knows exactly the cost of delivery.

The method of doing business with small retailers instead of with wholesale firms is regarded as far from satisfactory.

Customs Duties

The following duties may be taken as typical of the Italian Customs tariff upon British goods:—

Sewing thread, cotton, prepared for retail sale, 4·79*d.* per lb.
Fine velvets, printed, 10·23*d.* per lb.
Woollens, shawls, 8·27*d.* to 10·89*d.* per lb.
Steel rails, 2*s.* 5½*d.* per cwt.
Cutlery, common table and pocket, 3·48*d.* per lb.
Machinery, steam engines, 4*s.* 7*d.* to 11*s.* 5*d.* per cwt.
Tinplates, 5*s.* 8½*d.* or 7*s.* 4*d.* per cwt.
Leather belting, 34*s.* 7*d.* per cwt.
Rubber shoes, 1*s.* per pair.
Wallpaper, 12*s.* 2½*d.* per cwt.
Oil varnishes, 12*s.* 2½*d.* per cwt.
Paraffin wax, 6*s.* 1½*d.* per cwt.
Coal, free.
Cement, slow, 10*s.* 2*d.* per ton.
Copperas, 16*s.* 3*d.* per ton.
Beer, in casks, 1½*d.* per gal.
Fish, dried or smoked, 2*s.* 0½*d.* per cwt.
Candles, paraffin, 8*s.* 1½*d.* per cwt.

To secure advantage of the treaty rates of duty, goods imported into Italy must be accompanied by a certificate of origin drawn up in proper form. Certificates of origin are issued by Italian consular officers, Italian chambers of commerce in foreign countries, municipal authorities, foreign chambers of commerce, and foreign Customs authorities. In the case of goods from Britain and a few other countries, affidavits sworn according to the local laws before a notary public or judicial or consular authority are accepted as proper certificates of origin. There are certain specific points that must be stated in certificates of origin, such as the names and addresses of consigner and consignee, quantity, marks, and numbers of the packings, and other usual particulars. Imported meats must also be accompanied by a certificate of hygiene quality from the official sanitary department at the place of exportation.

Local Regulations

There are no licences or regulations affecting British travellers. Duty is charged upon samples of saleable value, but this duty may be avoided by virtue of the agreement between Britain and Italy, which is similar to that between Britain and Switzerland (see "Switzerland"). Railways give concessions upon luggage.

Italy is a member of the Latin Monetary Union, and her currency is therefore uniform with that of France, the *lira* of 100 *centesimi* being the equivalent of a franc. The weights and measures are those of the metric system, only their names are Italianized—for instance, *are* is *ara*, *stere* is *stero*, and so on.

Passports

British subjects producing passports at Italian post offices for purposes of personal identification may be required to obtain certified translations of the same from the British consul.

British Consulates.—
Brindisi, Consul.
Cagliari (Sardinia), Consul.
San Pietro, S. Antico, and Carloforte, Vice-Consul.
Sassari and Porto Torres, Vice-Consul.
Terranova, Vice-Consul.
Florence, Consul-General and Vice-Consul.
Ancona, Vice-Consul.
Portoferraio (Elba), Vice-Consul.
Venice, Consul.
Genoa, Consul-General and Vice-Consul.
Bordighera, Vice-Consul.
San Remo, Vice-Consul.
Savona, Consul.
Spezia, Vice-Consul.
Turin, Vice-Consul.
Leghorn, Consul and Vice-Consul.
Milan, Consul.
Naples, Consul and Vice-Consul.
Bari, Vice-Consul.
Barletta, Vice-Consul.
Capri, Consular Agent.

Castellamare, Vice-Consul.
Manfredonia, Vice-Consul.
Reggio, Vice-Consul.
Salerno, Vice-Consul.
Palermo (Sicily), Consul and Vice-Consul.
Catania, Vice-Consul.
Licata, Vice-Consul.
Lipari, Vice-Consul.
Marsala, Vice-Consul.
Mazzara, Vice-Consul.
Mazzarelli, Vice-Consul.
Messina, Vice-Consul.
Milazzo, Vice-Consul.
Porto Empedocle, Vice-Consul.
Pozzallo, Vice-Consul.
Syracuse, Vice-Consul.
Taormina, Vice-Consul.
Terranova, Vice-Consul.
Trapani, Vice-Consul.
Rome, Consul.
Civitavecchia, Vice-Consul.

Eritrea

The Italian possessions on the Red Sea are known by the designation of Eritrea or Erythrea. The area is about 45,800 sq. miles and the population about 450,000, the administrative capital being Asmara, and the port on the Red Sea Massowah (8000), reached by the steamers of the Italiana Navigazione Generale sailing from Genoa and Aden. There is a little gold-mining and pearl-fishing, but the inhabitants are chiefly nomadic, and even agricultural industry is hardly existent. There are some stock animals — camels, oxen, sheep, and goats—the pastoral industry being the only one suited to nomads. The exports from Massowah have a value of about £100,000 yearly, and the imports about three times as much. There is no trade with Britain.

Travellers proceeding to Italian colonies should, unless they carry special letters of recommendation to the authorities, provide themselves with passports, and obtain a *visa* from an Italian consulate.

Italian Somaliland

Italian Somaliland has an area of about 130,000 sq. miles and a population of about 400,000. Attempts are being made to establish cotton-growing, but there is really no agricultural or other industry in being.

Tientsin

The Italian station in China has an area of about 18 sq. miles and a population of about 17,000. There is a village and a few salt deposits, but no trade other than that of small local importance.

JAPAN

The area of Japan, excluding Formosa, the Pescadores, and Sakhalin, is about 147,650 sq. miles, so that it is almost three times the size of England. The population is about 50,000,000. Tokio, the capital, has a population of over 2,000,000, and Osaka has 1,230,000. Yokohama (394,000) and Kobe (378,000) are the principal ports and the points of foreign trade. The railways have a total length of about 5000 miles, and the Government is gradually acquiring the privately-owned lines besides constructing new lines.

Shipping, &c.

Japan is reached from Britain by the steamers of the Nippon Yusen Kaisha (Japan Mail Steamship Company) and the Peninsular and Oriental Company, sailing from London, and by the Norddeutscher Lloyd Company, sailing from Southampton. The quickest route is through Canada by the Canadian Pacific Railway, and from Vancouver by the direct sailings of Canadian Pacific steamers.

New York and Japanese ports are served by the steamers of the Barber Line, sailing via Suez, and by those of the United States and China-Japan Steamship Line sailing via Manila. Japanese ports are connected with San Francisco by the California and Oriental Steamship Company, the Occidental and Oriental Steamship Company, the Pacific Mail Steamship Company (every ten days), and the Toyo Kisen Kaisha. The Nippon Yusen Kaisha steamers and those of the China Mutual Steam Navigation Company sail fortnightly from Yokohama to Seattle. The Northern Pacific Steamship Company plies between Japanese ports and Tacoma, Washington.

Resources

The empire extends from the tropical zone almost to the frigid zone, and the variety of vegetable life is therefore wide. The most important crop is rice, which forms at once the staple food of the people and an important article of export. The other cereals are barley, rye, and wheat, although barley and wheat are risky crops on

account of the climate not being well suited for them. The other principal cereals are soya bean, awa, buckwheat, hiye, and millet. The sweet potato is the most important root crop. Rape claims a large acreage. Other agricultural produce, according to acreage covered, consists of tea, tobacco, ai, hemp and cotton, paper mulberry, lacquer, and peppermint. The cultivated land is less than 20 per cent of the total area. Tillage is carried on by primitive implements and farming is intensive. So much is taken from the soil that the acreage result is very poor on the average, and the farmers have a hard struggle to make ends meet. This condition of things accounts for the heavy emigration.

Cattle and horses are not as numerous as they are in European countries, and dairy products are not so extensively used. Milch cows are not kept by farmers but by special establishments. Japanese cows are excellent for draught purposes, but are poor in milking qualities, and dairy establishments depend upon Occidental breeds. The horses used in agriculture are slightly more numerous than the cows. Sheep were introduced into Japan many years ago, but the climate seems to be too humid for them, and they do not thrive well. Pig-raising is an important and increasing industry, and goats are about one-third as numerous as pigs. Poultry-farming is being developed, but it is far from being able to supply the demand for eggs. Bee-keeping has been tried, but it is not yet properly understood. Sericulture is important; the silk industry is one of the principal employers of labour in the country, and is expanding rapidly, as foreign markets seem able to take all the silks that Japan can produce.

Generally speaking, agricultural and kindred industries are becoming leavened by scientific practice, and the New Japan is taking lessons from the West in this department of affairs. The Government is the prime mover towards improved methods and appliances. An agricultural college has been established, and there are many experimental stations and agricultural societies. The farmers are encouraged to band themselves together in co-operation, so as to gain the attendant benefits of united action, and in sericulture and stock-breeding the Government gives aid in money and education.

Minerals

The chief minerals are coal, copper, gold, silver, iron, antimony, petroleum, and sulphur. Coal is first, the quantity raised annually being about 14,000,000 tons, of which 25 per cent is exported. Copper is the chief metallic mineral, the annual recovery being about 90,000,000 pounds, two-thirds of which is exported. Gold occurs both in vein and in alluvial deposits, and other metals worked to some extent are silver, lead, antimony, manganese, and iron. The iron produced, however, is not sufficient for national needs, and iron ore is imported from China. Petroleum wells are in active flow, and the yield is both large and increasing. Sulphur is found. The only ornamental stones are quartz and agate, and industrial use is made of large beds of granite and china clay.

Manufactures

The most pronounced evidence of the awakening of Japan is the great shipbuilding industry that she has established at Nagasaki, the port and naval station in the extreme south-west. The shipbuilding and machinery industries give employment to over 30,000 people, and the steamships and machinery manufactured in Japan compare with the best in the West. The Japanese nation served a brief apprenticeship to the West, and, having learned its lessons from Europe and America, set up in opposition. Japan has taken her place as a great power not in the field of politics alone. The textile group has always been a department of Japanese industrial life. With the aid of Western machinery it has expanded greatly. Cotton alone gives employment to over 70,000 hands. The annual output of silk, cotton, and other textiles has a value of about £25,000,000. Metallurgical works employ some 60,000 hands.

Exports

The exports of Japan show steadily increasing values, and are worth over £40,000,000 annually. The most important item is raw silk (25 per cent of the total); and other important articles are silk manufactures, copper, cotton yarn, coal, tea, matches, silk waste, cotton shirtings, matting, earthenware, rice, camphor, straw plait, saké, fish and whale oil, cigarettes, and umbrellas. The fine arts possess talented exponents in Japan, and their work, carrying distinctive qualities of its own, takes its place beside the best schools of Europe. Of Japan's exports, about 30 per cent goes to the United States, 20 per cent to China, 17 per cent to the British Empire (including 7 per cent to Britain), and 2 per cent to Germany. The principal exports to Britain are silks, copper, straw plaiting and matting, curios, oils, chemicals, jute manufactures, hewn wood, fancy goods, china and earthenware, rice, plumbago, drugs, basketware, canes and sticks, linen manufactures, paper, plants, silk waste, raw silk, skins, and furs.

Imports

The imports of Japan are worth about £50,000,000 annually, and Britain contributes about 25 per cent of the total, followed by the United States, China, India, and Germany. The principal articles imported are raw cotton, iron and steel, rice, sugar, cotton tissues, soya beans, machinery (chiefly locomotives and textile machinery), woollen tissues, oilcake, kerosene, nonferreous metals, wool and wool yarn, flour, paper, cotton yarn, furs, skins and leather, indigo, woollen tissues, watches and clocks, aniline dyes, glass, and tobacco. The principal items from Britain are cotton piece goods, iron and steel goods, machinery, woollen piece goods, manure, chemicals, electrical goods, paper, linen manufactures, arms and military stores, ships, cotton yarn, painters' colours, brass goods, hats, leather goods, implements and tools, lead and its manufactures, condensed milk, scientific instruments, silks, and stationery.

Customs Duties

The following are typical of the duties levied in Japan upon produce and manufactures of Britain:—

Cotton thread, 5·44*d.* per lb.
Cotton velvets, 1*d.* per sq. yd.
Woollen shawls, 40 per cent *ad valorem.*
Steel rails, 2⅔*d.* per cwt.
Cutlery, 40 per cent *ad valorem.*
Machinery, mostly 15 per cent *ad valorem.*
Tinplates, 10 per cent *ad valorem.*
Leather belting, 43*s.* 9*d.* per cwt.
Rubber shoes, 40 per cent *ad valorem.*
Wallpaper, 10 per cent *ad valorem.*
Varnish, 2·41*d.* per lb.
Paraffin wax, mostly free.
Coal, free.
Cement, 2*s.* 3*d.* per ton.
Copperas, 20 per cent *ad valorem.*
Beer, 1*s.* 1½*d.* per gal.
Salt fish, 3*s.* 5½*d.* per cwt.
Candles, 3*s.* 8½*d.* per cwt.

To secure the benefits of the treaty rates of duty, British goods exported to Japan must have a certificate of origin, for which there is no special form except that it must state the marks, numbers, descriptions, number of packages, weights and measurements of the goods, and the place of production or manufacture. Certificates of origin are issued by the Japanese Consulates or Commercial Agencies at the place of production or exportation, or, where there is no consulate or agency, by the local Custom House, or other Government Office or Chamber of Commerce. Certificates of origin must reach the consignees before the arrival of the vessel carrying the goods.

Local Regulations

Commercial travellers visiting Japan are subject to no licence or regulations. A deposit is required to cover duty on samples, but is refunded on re-exportation.

The monetary standard is gold, and the *yen*, which, however, is not issued as a coin, is the unit of value. It is worth about 2*s.* and contains 100 sen (1 sen = ½*d.*), which contains 10 rin (= $\frac{1}{10}$*d.*). The weights of Japan are as follows:—

1 Momme	=			3·75 grammes.
160	„	=	1 Kin	= 1·322 lb.
1000	„	=	1 Kivan	= 8·267 lb.

The measures of capacity are as follows:—

1 gō				=	1·26 gill (about).
10 gō	=	1 shō		=	1·58 qt. (about).
10 shō	=	1 to		=	0·49 bus. or 3·97 gal.
10 to	=	1 Koku	=		4·962 bus. or 39·703 gal.

The cloth measures are as follows:—

1 bu	=			15 in.
10 bu	=	1 sun	=	1·49 in.
10 sun	=	1 shaku	=	14·91 in.

The jō, which is about 10 ft., is used to signify height and depth. The Japanese railways are in British miles.

British Consulates.—
Tokio, Commercial Attaché and Consul-General.
Hakodate, Vice-Consul.
Kobé (Hiogo), Consul-General and Vice-Consul.
Osaka, Vice-Consul.
Nagasaki, Consul.
Shimonoseki, Consul.
Yokohama, Consul-General and Vice-Consul.

Japanese Possessions

Formosa, the Pescadores, and part of the island of Sakhalin belong to Japan. The lease of the province of Kwangtung, which includes Port Arthur, Talien, and Dalny, was transferred to Japan after her war with Russia. Korea, which was annexed in 1910, is considered below.

Formosa

Formosa, or Taiwan, an island off the coast of China, has an area of 13,460 sq. miles, so that it is almost twice as large as Wales. Its population is 3,000,000, mostly Chinese, but includes over

50,000 Japanese. The chief town is Tainan (population 54,000), which is a port. The chief commercial ports are Anping and Tamsui. The island is famous for its luxuriant vegetation. The forest trees include teak, camphor trees, pines, firs, bamboos, palms, and the other valuable plants include indigo and other dye plants, fibre and paper plants, tobacco, coffee, cassava. Coffee and bananas are cultivated, and rice paper is made from a plant indigenous to the island. Agriculture is active, but mining employs more people. Rice, tea, sugar, sweet potatoes, ramie, turmeric, and jute are cultivated. There is abundance of live stock —water buffaloes, oxen, swine, goats, poultry —and good fisheries. The principal minerals are gold, silver, coal, sulphur, and petroleum. There are some important industries, including flour-milling, sugar, tobacco, oil-expression, and distilling, while iron work, bricks, glass, and soap are made. The commerce is principally with Japan. The imports and exports have each a value of over £3,000,000 annually. The chief exports are tea and camphor. There are about 400 miles of railway. The currency is that of Japan. The British trade returns include Formosa with Japan.

British Consulates.—

Tainan, Consul.
Tamsui, Consul.

Pescadores

There are some twelve islands with an area of 50 sq. miles, and the population is about 52,000. The principal island is Hokoto, where there is good anchorage at Mako or Makung. The islands are stormy and dangerous to shipping. The industry is fishing.

Sakhalin

Sakhalin or Karafuto is divided between Russia and Japan, the latter having the southern portion, which has an area of 12,600 sq. miles and a population of 20,000, of whom over 18,000 are Japanese. The rigorous climate makes agriculture impossible. There are dense forests, the principal trees being spruce and larch. Sealskins and other furs are exported, and the fisheries are of some importance. The trade is almost exclusively with Japan.

Kwantung

This province includes Port Arthur and Dalny. Its area is 1256 sq. miles and its population 430,000. Dalny is a free port. There is a railway and coal mines, which Japan is developing.

British Consulate.—

Dairen (Dalny), Consul.

Korea

The area of Korea is estimated at 86,000 sq. miles, about two-thirds larger than England. Usual estimates of population are from 15 to 20 millions, but the actual figures are nearer 10 millions. There are about 125,000 Japanese and 7000 Chinese. The chief city is Seoul or Hangyang, the population of which exceeds 200,000.

There are several ports open to foreign trade, the chief being Chemulpo (46,000) and Fusan (82,000). There is no direct service between Europe or America and any Korean port, goods being sent to Shanghai or to a Japanese port and transhipped. There are several railways — one connecting Fusan and Seoul—most of them constructed and all of them owned by the Japanese Government.

Agriculture is in a primitive state. The great crop is ginseng, which both grows wild in the mountains and is cultivated as a Government monopoly, the result of which is that it provides over 10 per cent of the revenue. It is a herb with stimulating properties and is bought by the Chinese. Other products are rice, wheat, millet, sesame, maize, beans, cotton, tobacco, hemp, and perilla, which furnishes an oil and a pigment. Domestic animals are not numerous, but consist of cattle, a small breed of ponies, and pigs. The bull is the usual beast of burden. Fowls exist in plenty. The minerals are copper, iron, silver, and gold, but their exploitation is not actually pursued to any great extent, owing to the poor facilities for communication and transport. The fishing off the Korean coast—chiefly whale fishing—is good.

There are no records of the entire trade, but only of the trade passing through the treaty ports. The exports from these have a value of about £2,500,000 annually, 20 per cent being gold and the remainder consisting principally of beans and peas, hides, rice, and ginseng. Three-fourths of the trade is with Japan, and of the remainder four-fifths is with China, so that only 5 per cent of the total goes to other markets. There is almost no direct export trade with the United Kingdom.

Imports

The imports by the treaty ports exceed £4,000,000 annually, but the figures cannot be relied upon as accurate. The trade is chiefly with Japan. The principal items are cotton goods, railway materials, metals, timber, tobacco, kerosene, clothing, grass cloth, silk goods, and building material. Only about 4 per cent of the total value figures as going from Britain, but British goods, sent

principally through Japan and China, are supposed to represent about 25 per cent of the total value, the principal item being cotton goods. The direct British trade consists of cotton goods, iron, machinery, arms and ammunition, chemicals, and candles.

Local Regulations

Certificates of origin are not required for goods imported into Korea. The currency is uniform with that of Japan, Korean coins having equivalent values to Japanese coins. The weights and measures are as used in China.

Passports are not required within the radius of 33 miles from the open ports. Persons travelling in the interior must obtain a passport (about 7*s.*) through the British Consul.

British Consulates.—
Seoul, Consul-General.
Chemulpo, Consul.

LIBERIA

The Republic of Liberia is an independent state in West Africa, originally founded to provide a home for freed slaves on their ancestral continent. The republic lies between the British colony of Sierra Leone and the French colony of Ivory Coast. Its area is about 43,000 sq. miles, which is one-seventh less than the area of England, and the population is about 2,000,000, all being native Africans. The white residents number only about 100. The capital is the port of Monrovia (8000).

Shipping

Monrovia is reached by the Fraissinet Steamship Company from Marseilles, by the Transatlantica (Spanish) Line from Barcelona; by the British and African Line, and the African Steamship Company from Liverpool. There is no direct service from United States ports, and goods from America are sent to Liverpool and transhipped.

Resources

The country is rich in resources—mineral and agricultural—and in the hands of an energetic people would develop rapidly; but the constitutional unfitness of the negro race for self-advancement retards progress. The soil is fertile but lies untilled. Coffee can be grown to advantage, also cocoa and cotton, but neglect of the elementary rules of economical production and preparation makes the crops scanty and the quality poor. Piassava fibre, palm oil, and palm kernels are exported. The country is rich in rubber, but the output does not do justice to the natural wealth, and there are timbers of great commercial value. The chief mineral is iron, which is plentiful, and other minerals found are gold, copper, zinc, corundum, lead, and monazite. The Liberian Development Chartered Company is sinking capital to attempt the development of the country. Business houses are permitted in the interior under special conditions.

The chief export trade is to Britain, Germany, and Holland, and consists of rubber, palm oil and kernels, piassava, cocoa, coffee, ivory, ginger, annatto, and camwood. The total value is about £150,000 per annum, of which Britain takes about one-half. The chief exports to Britain are piassava fibre, rubber, palm oil, palm kernels, and coffee.

The chief imports of Liberia are cotton goods, provisions and woodwork, iron goods, boots and clothing, and gin. The first three go chiefly from Britain, the gin from Holland, and the hardware from Germany. The imports are of about the same value as the exports, and Britain's proportion is about uniform in both departments. There is no accommodation in the country for white travellers, who seldom visit the territory.

Local Regulations

Certificates of origin are not required for goods imported into Liberia.

Accounts are kept in American dollars and cents (see "United States"), but the money in circulation is chiefly British. The weights and measures are British. A passport issued by the Liberian Secretary of State is required from residents leaving the country (50 cents).

British Consulate.—
Monrovia, Consul-General and Vice-Consul.

MEXICO

The state of Mexico has an area of 767,000 sq. miles, and is thus about 6½ times as large as the United Kingdom. The population is about 14,000,000, of whom 20 per cent are white, 38 per cent Indian, and the rest of mixed race. The principal cities are as follow: Mexico, the capital, 345,000; Guadalajara, 101,000; Puebla, 94,000; Monterey, 62,000; Leon, 64,000; San Luis Potosi,

61,000, Merida, 44,000; Guanajuato, 42,000, Morelia, 37,000.

Shipping and Railways

The chief Atlantic port is Vera Cruz (30,000), but Tampico and Progreso have also a fair trade. The chief Pacific ports are Salina Cruz and Mazatlan. All the chief ports are on the railway system, which is good and has over 15,000 miles of track. To the progressive railway policy, more than to any other single factor, Mexico owes her rapid advance as an industrial and commercial nation.

There is direct steamship communication with the ports of Mexico—Vera Cruz, Tampico, and Coatzacoalcos—by the Leyland Line from Liverpool, by the Hamburg-American Line from Hamburg, Havre, and Southampton, and by the Compagnie Générale Transatlantique from St. Nazaire. From the United States Mexico may be entered by the Southern Pacific Railway by three different routes. The Pacific ports of Mexico have steamer communication with San Francisco by the services of the Cia. Sud-Americana de Vapores (fortnightly); the Pacific Coast Steamship Company (every eight days); Pacific Mail Steamship Company (thrice monthly); and Pacific Steam Navigation Company. The Gulf ports of Mexico are served by the Compagnie Générale Transatlantique, whose vessels call weekly at New York and New Orleans; by the Compania Transatlantica from New York; the Gonzalez Direct Line monthly from New York and New Orleans; the Harrison Line, West Indian Line, and Pacific Steamship Company, all three calling at New Orleans monthly; the New York and Cuba Mail Steamship Company, twice weekly from New York; the Spanish Compania Transatlantica, which call at New York on their way from Europe; the Ward Line from New York.

Resources

Mexico has made great strides since she was shorn of two-thirds of her territory by the United States. Under the autocratic but enlightened rule of President Diaz her resources developed greatly. The most valuable department exploited is that of minerals, which are worked in twenty-six of the thirty-one states and territories forming the Mexican confederation. Mexico is the richest silver country in the world, the value of the silver exported being 60 per cent more than that of all other minerals combined. The other minerals are copper and gold, with small quantities of zinc, lead, iron, antimony, graphite, and asphalt. A few opals are found, and onyx is quarried and exported. Millions of capital, chiefly British, have been directed into the oilfields enterprise. Stock-raising lands have four times the acreage of that under tillage. The chief stock is cattle, of which the country has about 6,000,000, while goats and sheep number more than half that figure. Crops do not have the attention that is their due, owing to the mines having exercised a greater spell over the immigrants. The system of land tenure has held the progress of agriculture in leash. The best land is held in enormous estates, and immigrant agriculturists have found it impossible or difficult to acquire holdings of reasonable size. But while much betterment of conditions is still possible, modern farming practice is invading the domain of the antiquated system of tillage. The principal crops and agricultural products, in the order of their importance according to harvest value, are maize, henequen, wheat, sugar, coffee, brandy, beans, pulque, cotton, molasses, barley, tobacco, peppers, rice, ixtle, cacao, peanuts, vanilla, indigo, potatoes. The list is surprising in variety, and betrays evidences of the varied climates which different parts of Mexico, tempered by diversity of altitude, possess. The fruits grown include bananas, oranges, lemons, limes, pineapples, and temperate fruits such as apples, pears, and peaches. If these are the main agricultural products they do not exhaust the list of potential products. In the climate of Mexico there is no reason why everything grown in other countries, tropical, sub-tropical, or temperate, should not be cultivated to advantage. Something has been done with rubber plantations, but, although parts of the country are favourable to the industry, it has not yet been established firmly on an exporting basis.

Manufactures

Two factors have prevented enormous advances in manufacturing industries—scarcity of suitable labour and the manner in which Government discountenanced the formation of monopolies or trusts. But the labour question is gradually solving itself by means of immigration and education. The most important manufacturing industry is cotton-weaving, a single company with a capital of £3,000,000 employing 5000 hands and having in operation on a single floor more machinery than there is anywhere else in the world under similar conditions. Some other manufacturing industries exist on a large scale—sugar-refining, cigars and cigarettes, iron and steel, and foundry products. Other manufactures already established and expanding into the fullness of activity produce clothing, furniture, boots and shoes, paints, varnish, soap, flour, and paper.

Exports

The exports of Mexico have an annual value of about £25,000,000, of which 30 per cent represents silver, chiefly in the form of bullion. Gold accounts for 15 per cent of the total, copper for 10 per cent, and lead and other minerals bring up the exports from the mines to about two-thirds of the total export value. The principal vegetable product exported is raw henequen, which represents about 10 per cent of the total, and the principal agricultural exports otherwise are coffee, ixtle, vanilla, peas, tobacco, rubber, and chicle (gum). Skins are exported, chiefly goatskins and cattle hides. Cattle and horses are not unimportant items, and cabinet and dye woods make the list fairly complete except for articles of little importance. Of the export value two-thirds goes to the United States and about a third of the remainder to the United Kingdom, while Germany and France come next on the list. Seventy to eighty per cent of Britain's purchases from Mexico consist of metals—silver, copper, lead, antimony, and gold—with coffee, sugar, mahogany, rubber, oilseed cake, piassava, hemp, logwood, and cotton also of importance.

Imports

Mexico's imports have an annual value of over £20,000,000, and here again the United States is responsible for two-thirds of the total quantity, with Britain, Germany, and France next in order. Half of Britain's proportion is for textiles, chiefly cotton goods, but woollens are also very important. Iron and its manufactures, machinery, coal, chemicals, cement, hardware implements, and tools complete the list of important classes. The principal articles of export from the United States to Mexico are iron and steel goods, coal, vehicles, wood and its manufactures, cotton, maize, wheat, copper goods, electrical machinery, and locomotives.

Customs Duties

The following are typical of the duties levied in Mexico upon produce and manufactures of the United Kingdom:—

Cotton thread, 1·57*d.* per 1000 yd.
Cotton velvets, 5·77*d.* per sq. yd.
Woollen shawls, 3*s.* 6*d.* or 5*s.* 8*d.* per sq. yd.
Steel rails, 2*s.* 7½*d.* per cwt.
Cutlery, 22*s.* 10*d.* per cwt.
Machinery, 1*s.* 8½*d.* per cwt.
Tinplates, 1*s.* 1¾*d.* per cwt.
Leather belting, 6*d.* per lb.
Rubber shoes, 11*d.* per lb.
Wallpaper, 15*s.* 6¾*d.* or 32*s.* 2*d.* per cwt.
Varnish, 22*s.* 10*d.* per cwt.
Paraffin wax, 9*s.* 4*d.* per cwt.
Coal, free.
Cement, 14*s.* 6*d.* per ton.
Copperas, 20*s.* 9*d.* per ton.
Beer, in barrels, 10*s.* 4½*d.* per cwt.
Salt fish, in barrels, 15*s.* 6¾*d.* per cwt.
Candles, mostly, 20*s.* 9*d.* per cwt.

Local Regulations

The commercial traveller visiting Mexico is taxed many times. There are both state and municipal taxes, some of which are at the discretion of the assessing officer. Then there is a federal tax of 10*s.* per cent upon the value of the orders taken. In the Federal district, and in the states of Guerrero, Jalisco, and Tlaxcala, no special tax is levied, but in other states varying imposts exist. In the state of Mexico, Government exacts 6 per cent commission upon transactions made with private persons, and upon sales of machinery and upon any sales to mining companies. The taxes in the other states are too numerous to consider in detail, but the commercial traveller about to visit Mexico must be prepared for many grievous exactions.

No certificates of origin are necessary for goods imported into Mexico, but invoices must be legalized by Mexican consuls, and must specify country of origin besides the usual particulars of nature, marks, and values. The shipper must make a declaration under oath before the Mexican consul, who attaches an official certificate to the invoice.

The standard of currency is the silver *peso*, or dollar, which contains 100 centavos, and is worth about 2*s.* 0½*d.* in British money. The weights and measures are those of the metric system (see "France"), although in domestic trade the old Spanish standards are still used to a slight extent.

British Consulates.—

Mexico, Consul-General and Vice-Consul.
Chihuahua, Vice-Consul.
Ensenada, Vice-Consul.
Guadalajara, Vice-Consul.
Guanajuato, Vice-Consul.
Guaymas and Santa Rosalia, Vice-Consul.
Puebla and Oaxaca, Vice-Consul.
Colima, Consul.
La Paz, Vice-Consul.
Mazatlan, Vice-Consul.
Progreso, Consul.
Laguna de Terminos, Vice-Consul.
Xcalak, Consular Agent.
Salina Cruz, Consul.
Acapulco, Vice-Consul.
Soconusco (San Benito), Vice-Consul.

Tampico, Consul and Vice-Consul.
Monterey, Vice-Consul.
Saltillo and Concepcion del Oro, Vice-Consul.
Vera Cruz, Consul.
Frontera, Vice-Consul.
Puerto Mexico (Coatzacoalcos), Vice-Consul.
Tuxpam, Vice-Consul.

MONTENEGRO

Montenegro, a small kingdom bordering on the eastern shore of the Adriatic, has an area of 3630 sq. miles, so that it is about half as large as Wales, and its population is about 250,000. The capital is Cettinje, with a population of 4500. There are two small ports on the Adriatic—Dulcigno (5000) and Antivari (2500). The largest town is Podgoritza, with a population of about 10,000.

Shipping and Railways

Cettinje is 15 miles from the Austrian port of Cattaro, whence it is reached by a good mountain road. Cattaro is in regular and frequent steamship communication with Trieste, Fiume, and other Adriatic ports. The only railway in the territory of Montenegro is a short line from Antivari to Vir Pazar on the Lake of Scutari, and while many of the so-called roads are mere bridle paths, roadmaking is receiving attention.

Resources

The country is mountainous, with some valleys and plains that are fertile. While the practice of agriculture is rude, the smallest plot of land that can be made to yield produce is cultivated. The crops are maize, potatoes, cabbage, cauliflowers, tobacco, peaches, olives, pomegranates, mulberry, apples, vines, carobs, almonds, figs, and walnuts. Sheep, goats, and pigs are reared, and wool and cheese are exported. There is abundance of good oak, holly, ash, beech, fir, walnut, hazel, poplar, alder, and sumach trees in the forests, but the lack of transport facilities prevents their use commercially. Fishing, chiefly for trout and carp, is comparatively important, especially in the Lake of Scutari, and carp is dried, salted, and exported. The only manufacture consists of rough woollens. An Italian syndicate controls the tobacco trade. No minerals are worked, though iron deposits exist.

Trade

The exports of Montenegro do not reach £100,000 annually, and the imports exceed £200,000. There is no direct trade with the United Kingdom, although some few British products reach the country through other countries. Trade is chiefly with Austria, but salt goes from Turkey and petroleum from Russia. The principal exports are sumach, insect powder, sardines, live animals, wool, hides, skins, and furs, cheese, olive oil, wine, tobacco, honey, and wax. The imports consist of cereals, coffee, rice, sugar, cotton goods, and hardware.

Local Regulations

There are no regulations regarding commercial travellers. Austrian currency circulates in Montenegro and is the recognized medium of exchange. French and British gold also passes current at rates of exchange fixed periodically by the Government. The metric system of weights and measures is used (see "France").

A passport properly *visé* is required for travelling through the surrounding Turkish and Austrian territories.

MOROCCO

Morocco is supposed to have an area of about 219,000 sq. miles, and, if the estimate be correct, it is 60 per cent larger than the United Kingdom. The population is thought to be about 5,000,000. The capital is Fez, an inland town (140,000). The southern capital is Marrakash, better known as the city of Morocco (50,000).

Shipping

The only points of contact with the outer world are at the ports, the chief of which is Tangier (35,000). The other ports are Dar-al-Baida (Casablanca), Mogador, Rabat, Laraiche, Mazagan, Saffi, and Tetuan.

Tangier and Mogador are reached from London by the Royal Mail Steam Packet Company's steamers, and the former town is reached from Liverpool by the Papayanni-Ellerman Line. There is a good daily service from Gibraltar to Tangier and Ceuta, and a frequent service from Gibraltar to Mogador, Mazagan, and Casablanca. Goods from the United States to Morocco are transhipped at Liverpool or Gibraltar.

Resources

Morocco is rich in potential wealth, but political unrest prevents the resources from being exploited. It is unquestionably a highly mineralized country, but the extent or variety of its mineral deposits is not known. Copper, iron, and lead are found. Morocco is also capable of becoming a good wheat-growing country. There are some oxen, goats, and sheep, and poultry-farming is important. Other natural products are almonds, beeswax, and linseed. Almost the only manufacture of Morocco seen in outside markets is leather work.

The ports mentioned above are the only points of commerce for foreigners. The exports have a value exceeding £2,000,000 annually, and one-third of the value finds a market in France and its African colonies. The United Kingdom and Germany are about equal, each with one-fifth to one-fourth of the total, followed by Spain, Egypt, the United States, and Italy. The chief exports are barley, hides and skins, wool, oxen, eggs, almonds, and slippers The principal purchases by Britain are barley, eggs, almonds, goat and sheep skins, wool, seeds, gums, beans, drugs, and wax.

Imports

The imports of Morocco, which have an annual value of about £3,000,000, consist chiefly of cotton goods, sugar, flour, tea, candles, cloth, and hardware. Among the contributors Britain and France are about equal, each having 40 per cent of the total. Germany, Belgium, and Spain are the other countries of importance. Britain's principal exports to Morocco are cotton goods and candles, with jam and woollen goods representing much smaller value.

Local Regulations

Certificates of origin are not required for goods imported into Morocco, but the person clearing the goods in Morocco must make a declaration stating, among other particulars, the origin of the goods. In Tangier Spanish currency is used; in other parts of the country the Moorish currency prevails. An ounce is a coin worth about 3½*d.*, being divided into 4 blankeels (worth nearly 1*d*), and being one-tenth of a Mitkal (worth about 2*s.* 3*d.*). The native weights vary in different districts, but the kintar of 112 lb. (divided into 100 rotals) is used for imported goods at the ports. The drah of 8 tominis is about equal to 22 in.; the mudd, as used in Tangier for capacity measure, is equal to $1\frac{17}{20}$ bus., and the kula, used for measuring oil, is 5·29 imperial gal.

It is advisable for travellers to be provided with passports, which are sometimes necessary.

Anyone wishing to travel into the interior should consult H.M. Minister at Tangier or the British Consul for the district through which his route lies.

British subjects residing for more than one month in Morocco are required to register themselves at a British Consulate.

British Consulates.—

Tangier, Consul-General and Vice-Consul.
Alcazar, Consular Agent.
Arzila, Consular Agent.
Laraiche, Vice-Consul.
Tetuan, Vice-Consul.
Dar-al-Baida (Casablanca), Consul and Vice-Consuls.
Mazagan, Vice-Consul.
Mogador, Vice-Consul.
Morocco City, Consular Agent.
Rabat, Vice-Consul.
Saffi, Vice-Consul.
Fez, Consul.

NICARAGUA

(See also Central America)

Nicaragua is the largest of the Central American States (a little larger that Guatemala), and extends from ocean to ocean, thus possessing ports on both sides of the isthmus. The political capital is Managua on Lake Managua, with a population of 35,000. The principal towns are between the Pacific Coast and the lakes. Leon, the largest, has a population of 60,000, and others are Chinandega (13,000), Masaya (15,000), Granada (25,000). The Pacific port is Corinto, whence a railway runs to the cities on the lakes, and the eastern ports are Bluefields and Greytown. The mass of the population is native Indian, with a mixture of the negro element; the white element is, however, increasing.

Resources

The western part of the country has an oppressive climate, but it has become the centre of activity on account of the facilities of transport afforded by the two great lakes—Nicaragua and Managua. The soil is exceptionally fertile, and, in spite of primitive methods of agriculture, the returns are remarkable. The sugar cane yields

two annual crops, sometimes three. In the east, four crops of maize may be secured annually, and indigo can be cut three times before it requires replanting. Cotton is remarkable for its rapid growth in the western parts. Coffee, the cultivation of which is chiefly in German hands, yields good returns between the altitudes of 2000 and 3000 ft., and the return of rice is generous in the central and eastern slopes. Rubber is now cultivated systematically, and other crops are bananas and cacao. The scarcity of labour keeps returns down, but if the supply were adequate and backed by enterprise, Nicaragua would take a high place as an exporter of semi-tropical products. Rice, maize, and beans are cultivated, but the domestic market absorbs the entire output. Bananas, grown in the Bluefields district, are exported to the United States. Cattle, horses, and pigs, but not sheep, are reared. The cheese, milk, and hides are all consumed locally, but some cattle are exported. There is a wealth of forest timbers, including mahogany, cedar, and dyewoods; gums and medicinal plants are collected. Rubber grows in the inland forests, and plantations have been made on the coasts. Nicaragua takes second place among the Central American States in the wealth of its minerals—Honduras being first. The only deposits worked to any extent are the gold mines, or those which contain both gold and silver. They are exploited chiefly by United States capital. Other known mineral deposits include copper, lead, iron, mercury, salt, sulphur, coal, tin, nickel, and zinc. Domestic industries include the manufacture of boots and shoes, furniture, cigars, sugar, soap, candles, beer, and spirits, all of which help to supply local demands.

In spite of the wealth of natural resources, the exports of the country are only about £800,000 annually. The chief items of export are coffee, timber, gold, rubber, bananas, cattle, and hides. The value absorbed by the United States is about 60 per cent, the remainder going mostly to France, Germany, and Britain. Raw coffee is the main purchase by the United Kingdom, and articles of minor importance are mahogany, dyewoods, cotton, and rubber.

Imports

The imports are of about the same annual value as the exports. They consist chiefly of cotton and other textile products, firearms, provisions, glassware, iron, hardware, and agricultural implements. About 60 per cent of the imports is from the United States, the remainder being from Britain, Germany, and France. Britain's share has an annual value of about £150,000, of which two-thirds is for cottons.

Under treaty arrangements between Britain and Nicaragua, goods of British origin are favoured by a rebate of 25 per cent from the general scale of duties. To secure this rebate a certificate of origin is required. No special form of certificate is necessary, but it facilitates matters if the certificate be accompanied by a translation in Spanish, or, better still, if it be drawn up in the Spanish language. Certificates of origin should be issued by the Chamber of Commerce in the district where the goods are manufactured, or, where there is no such chamber, it should be drawn up by the exporters and signed by the highest local authority. All certificates must be *visé* by a Nicaraguan consular officer, whose regulation fee is four dollars.

Local Regulations

The currency is based on the silver *peso* or dollar (of 100 centavos or cents), which is worth about 1*s.* 8*d.*

British Consulates.—

Managua, Consul-General and Consul.
Greytown, Consul.
Bluefields, Vice-Consul.
Corinto, Consular Agent.

NORWAY

The area of Norway is 124,130 sq. miles, so that it is just a little larger than the United Kingdom. The population is under 2,500,000. The capital, and by far the largest town, is Christiania, with a population of 230,000. The other chief towns are Bergen (75,000), Trondhjem (40,000), Stavanger (33,000), Drammen (25,000), Christiansand (15,000), Fredrikstad (15,000). All are ports, the capital having much the largest shipping. The trade of the country is concentrated principally in Christiania, Bergen, and Trondhjem.

Shipping and Railways

Communication is maintained between Britain and Norway by the Wilson line of steamers sailing from Hull to Bergen, Christiania, Christiansand, Trondhjem, and Stavanger; by Mathiessen & Co.'s steamers, plying from Newcastle to Bergen, Trondhjem, and Stavanger; and by the Leith, Hull, & Hamburg Company's steamers from Leith to Christiansand. Norwegian ports are in touch with New York by indirect services.

Steamers of Det Forenede Dampskibs-Selskab (The United Shipping Company, London) from Copenhagen to New York call at Christiania and Christiansand thrice monthly.

There are over 1800 miles of railway in Norway, nearly all state-owned, but the principal means of communication is by steamboats, which ply along the coast and on the lakes.

Resources

Agriculture is unimportant, as only 3 per cent of the total area is under cultivation; three-quarters of the area is unproductive, and over one-fifth is under forest. The agricultural crops are, in their acreage importance; oats, barley, potatoes, rye, mixed corn, wheat, beans and peas, turnips, and vetches; but the produce is not sufficient for domestic requirements. The live stock consists, according to numerical importance, of sheep, cattle, pigs, goats, horses, and reindeer, the total number being about 3,500,000. The number of horses and pigs tends to increase, of the others to decrease. The timber industry is the most important of all, and systematic planting in the south and east of the country has stayed the former diminishing importance of the timber supply. Three-quarters of the forest area is under pine trees, and a considerable area is state-owned, and administered by the Minister for Agriculture. Timber and its products, including paper and paper pulp, are responsible for 45 per cent of the export value. The fisheries, which exist all along the coast, give employment to over 100,000 people. More than two-thirds of the catch value is for cod, and the other fish are herring, mackerel, salmon, shark, walrus, seal, and lobster. The inland waters abound with salmon and salmon trout. The minerals are many and plentiful, the most important being iron, copper, silver, cobalt, nickel, felspar, and marble. The output, although only worth about £600,000 annually, is increasing steadily. According to value of output the chief mineral products are pyrites, copper ore, iron ore, silver, felspar, and apatite.

The industries of Norway are increasing under the protective system and abundance of water power, but they are not yet of great importance. The industrial establishments are almost all in and around Christiania, and employ only about 50,000 people. They are textile factories, engineering and machine shops, iron and metal works, brick works, chemical factories, flour mills, tobacco factories, breweries, and (of much less importance) tanneries, distilleries, and manufactories of matches, glass, oil, and paper.

Exports

The value of the exports of Norway exceeds £12,000,000 annually. By far the most important purchasing market is Britain, where 40 per cent of Norway's exports are sent. Then follow Germany, Holland, Sweden, Denmark, Spain, Belgium, and France. The two great classes from which exports are drawn are timber (including wood pulp) and fish. Each of these classes contributes over one-third of the value of the total exports. The exports of wood pulp have grown rapidly until quite 40 per cent of the entire value in timber and its products pertains to wood pulp. Sixty per cent of the wood pulp is chemical pulp. In the fish group almost 60 per cent of the value is for dried cod; salted herrings are next in importance. Exports of anchovies and lobsters are also prominent in the group. The other important articles in the tale of Norway's exports are packing paper, train oil, sulphur, ice, iron nails, matches, and calfskins. In Britain's imports from Norway, aggregating about £7,000,000 annually, timber is the most valuable department, and, with wood pulp, constitutes about half of the total value. Fish and paper come next, and the other important articles are iron and steel, ice, stones, condensed milk, pyrites of copper and iron, drugs, chemicals (chiefly carbide of calcium), butter, matches, raw hides, and fish oil.

Imports

Norway's imports have risen rapidly until they exceed £20,000,000 annually. The chief suppliers of Norway are Germany and Britain, each with more than a third of the total value, and the other important countries are Sweden, Denmark, Russia, the United States, Holland, and Belgium. The principal article in British exports to Norway is coal, the value of which exceeds £1,000,000 annually, and other important articles are ships, iron, cotton goods, machinery, grain, woollens and wool, molasses, chemicals, jute goods, copper, spirits, manure, implements and tools, hardware, and haberdashery.

Customs Duties

The following duties may be taken as typical of those in force in Norway upon produce and manufactures of the United Kingdom.

Bleached single-thread cotton yarn, 0·91*d.* per lb
Cotton velvets, 7·56*d.* per lb.
Woollen shawls, 9 07*d.* per lb.
Steel rails, free.
Cutlery—pen and table knives, 112*s.* 11*d.* per cwt.

Machinery, mostly 10 per cent *ad valorem.*
Tinplates, free.
Leather belting, 1 81*d.* per lb.
Rubber shoes, 56*s* 6*d.* per cwt.
Wallpaper, 16*s.* 11*d* per cwt.
Varnish (non-alcoholic), 8*s.* 6*d.* per cwt.
Paraffin wax, free.
Coal, free
Cement, 3*s.* 4½*d* per ton.
Copperas, free.
Beer, in casks, 14*s* 1¼*d* per cwt.
Herrings, salted or preserved, free.
Candles, paraffin, 11*s.* 3½*d.* per cwt

No certificates of origin are required for British goods imported into Norway.

Local Regulations

The commercial traveller visiting Norway must take out a licence costing 100 kroner (£5, 11*s.*) per month, and must report himself to the police in each town. Samples, when of value, pay duty, and under certain conditions drawback is allowed upon re-exportation.

The currency of Norway is the same as that of Denmark (see "Denmark"). The metric system of weights and measures is used (see "France").

British Consulates.—
Christiania, Consul and Vice-Consul.
Arendal, Vice-Consul.
Bergen, Vice-Consul.
Bodo, Vice-Consul.
Christiansand, Vice-Consul.
Christiansund, Vice-Consul
Drammen, Vice-Consul.
Egersund, Vice-Consul
Flekkefiord, Vice-Consul.
Frederikshald, Vice-Consul.
Frederikstad, Vice-Consul.
Hammerfest, Vice-Consul.
Haugesund, Vice-Consul.
Kragero, Vice-Consul.
Laurvig and Sandefiord, Vice-Consul.
Lofoten Islands, Vice-Consul.
Mandal, Vice-Consul.
Molde, Vice-Consul.
Moss, Vice-Consul.
Namsos, Vice-Consul
Risor, Vice-Consul.
Skienfiord (Porsgrund), Vice-Consul.
Stavanger, Vice-Consul.
Tonsberg, Vice-Consul.
Tromso, Vice-Consul.
Trondhjem, Vice-Consul.
Vadsö, Vice-Consul.
Vardo, Vice-Consul.

OMAN

Oman is an independent Sultanate on the Arabian side of the Persian Gulf, and is virtually under British protection. Its area is 82,000 sq. miles, so that it is about half as large again as England and Wales. The population is now estimated at 500,000. Commerce centres at the town and port of Muscat or Mascat (population about 25,000) on the Persian Gulf.

It is reached by the steamers that serve the Persian Gulf ports (see "Persia"). There is a possibility of some agricultural development, but the country is unsettled, with no security of life or property in the interior. Nothing is known of the mineral resources.

The exports, which are of the annual value of about £300,000, consist chiefly of dates, mother-of-pearl, fish, limes, and fruit, chiefly to India, and only occasionally to Britain direct.

The imports have an annual value of about £700,000, and consist chiefly of rice, arms and ammunition, cotton piece goods, sugar, silk goods, twist and yarn, sugar, coffee, wheat, and other cereals. The import trade also is with British India for the most part. Direct merchandise from Britain consists chiefly of small arms and ammunition.

In Muscat the Indian rupee circulates, and throughout the Sultanate the Maria Theresa dollar, which is equal to about 1 rupee. The standard weight is the Muscat man, which contains 237 tolas; a tola is the weight of a rupee—180 grains—so that a Muscat man is about 6 lb. Travelling in the interior is unsafe without an armed escort.

British Consulate.—
Muscat, Consul.

PANAMA

(See also Central America)

Panama was formerly part of the Republic of Colombia, and became an independent state only in 1903. Owing to the Panama Canal, and to the interests acquired by the United States through its treaty with Panama, the small state became virtually a dependency of the United States, which

received a strip of land 5 miles wide on each side of the canal, besides other concessions of importance. The capital of the state is Panama, a port on the Pacific coast with a population of 30,000, but by the terms of the treaty mentioned the harbour of Panama, so far as foreign trade is concerned, is within the Canal zone, and therefore in the jurisdiction of the United States. The only other place of importance is the port of Colon or Aspinwall, near the Atlantic end of the Canal, which has a population of 14,000. Almost all the foreign trade of the republic passes through these ports. The Americans have established an Atlantic port within the Canal zone and called it Cristobal. The railway from Colon to Panama belongs to the United States Government.

The population is very mixed, including Spanish, Indian, Negro, and Chinese.

Resources

The soil is fertile, and tropical fruits grow luxuriously. The most important produce is the banana, and the chief seat of its cultivation is on the Atlantic coast, near the Costa Rican frontier, where an American company owns large plantations, the fruit from which is exported from the small port of Bocas del Toro. Coffee is also grown extensively in the western parts of the state. Rubber is collected wild, and also from cultivated plantations. Other products are coconuts, mahogany, and other valuable timbers, and a variety of medicinal plants. Stock-rearing is an industry of moderate importance, and the stock includes cattle, horses, pigs, goats, and mules. There is some pearl-fishing in the Gulf of Panama, and turtle shell is also obtained and exported. The country is rich in minerals, but has no coal. Gold-mining has been attempted, but with indifferent success, and no other minerals have been exploited to an appreciable extent. Manufacturing claims only a few small factories, the only products being ice, soap, chocolate, and aerated waters.

The chief articles of export, for the values of which no figures are available, are bananas, coconuts, turtle shells, ivory nuts, hides, and coffee. The United States is the chief customer. Britain purchases goods varying from £25,000 to £50,000 annually, and consisting chiefly of drugs and shells.

Imports

The imports total about £1,500,000 annually, 50 per cent of which goes from the United States and 25 per cent from Britain. The principal exports from Britain are cotton goods, clothing, woollens, linens, metals, and machinery.

No certificates of origin are required for goods imported into Panama.

Local Regulations

The monetary unit is the gold *balboa*, which is of the same value as the United States dollar, and contains 100 cents.

British Consulates.—

Panama, Consul-General and Vice-Consul.
Colon, Vice-Consul.
Bocas del Toro, Vice-Consul.
David, Consular Agent.

PARAGUAY

(See also South America)

Paraguay has an area about four-fifths that of the United Kingdom. Its population of over 600,000 is very mixed, including 50,000 Indians, the remainder being chiefly of Spanish Indian and negro blood. The capital of the republic is Asuncion (60,000), which is a port on the Paraguay River. The other towns of moderate importance are Villa Rica (25,000), connected with the capital by railway; Concepcion (14,000), a river port of some commercial importance; Caazapá (15,000); Luque (15,000); Carapegua (14,000). There is a magnificent system of waterways, and liners ascend the river to Asuncion. There is one railway of 156 miles, but otherwise the commerce of the country must depend principally on its rivers, for the country roads are merely tracks that make transport difficult and expensive.

Resources

Paraguay is principally a grazing country, and its stock consists of cattle, sheep, horses, goats, pigs, and mules and asses. The chief crop is Paraguay tea, or *yerba maté*, and other products are tobacco, fruit (principally oranges), maize, and mandioc. Timber is cut and exported, chiefly the quebracho. There are no minerals exploited, although deposits of iron, copper, and gold are known. There are a few manufacturing industries, the output, which is of poor quality, helping to meet the demands of the local market.

The exports come to about £750,000 annually, the chief items being meat, hides, timber, *yerba maté*, oranges, tobacco, and quebracho extract. Practically no produce of Paraguay reaches Britain direct, although some filters through Brazilian and Argentine channels.

Imports

The chief imports of Paraguay are textiles. Of the total value of imports—varying from £800,000 to £1,500,000—Britain supplies about 20 per cent, more than half the proportion being for cotton goods, the only class of any importance.

No certificates of origin are required for goods imported into Paraguay, but the origin of the goods must be stated on the bill of lading, which must be *visêd* by the consul of Paraguay at the port of shipment, the fee for the service being 8*s*.

Local Regulations

Commercial travellers on entering Asuncion pay a tax of $400 to $600 (£10 to £15), and if they visit country towns they are subject to local taxes. Dutiable samples are allowed to enter free upon an undertaking to pay the duty if they are not re-exported.

Paraguay has no coinage of its own, but the coins of the neighbouring republics — Argentina, Brazil, Uruguay — circulate and have the same value as in their country of issue. The currency is *pesos* or dollars, and there is a good deal of paper money, the peso being worth 4*s*. nominally, but at the usual premium of gold in the country the paper dollar is worth only about 5½*d*.

Persons travelling in the interior of the country should be provided with passports.

British Consulate.—
Asuncion, Consul.

PERSIA

Persia contains an area of 630,000 sq. miles, so that it is over five times as large as the United Kingdom, but much of it is arid desert.

The population is estimated at 9,500,000, of whom 2,000,000 are nomads, and only about 1200 are Europeans. The principal cities and towns, with their populations, are Teheran, the capital, 280,000; Tabriz, 200,000; Ispahan, 80,000; Meshed, 60,000; and Kerman, 60,000. Russia and Britain agreed by a convention of 1907 to limit their spheres of influence in Persia to prescribed districts—Britain in the south-east and Russia in the north, with a neutral zone between. The Persian Gulf coast is in this neutral zone.

Shipping

The chief ports on the Persian Gulf, where trade with Britain finds its entrance and exit, are Bushire, Lingah, Bunder Abbas, Basra, and Mohammerah.

The Persian Gulf ports are reached from London direct by the monthly sailings of the Anglo-Arabian line (Strick), or from Bombay and Karachi, in India, by the British India steamers twice weekly. Goods from America are sent via Britain and transhipped.

Resources

The desert parts and the greater portion of the tablelands are barren, but the soil responds marvellously to irrigation. When political disturbances have abated, and irrigation can be taken up on an adequate scale, much wilderness may be made fertile. There are wheat and other cereals, sugar cane, rice, opium, tobacco, gum tragacanth, cotton, and a variety of fruits. The important industry of silk culture was for some time impaired by disease. The pearl fisheries of the Persian Gulf have an annual output of £200,000 to £300,000. Minerals, except for a little lead, copper, and iron, have not been worked, on account of transport, fuel, and water difficulties, but coal, zinc, tin, nickel, cobalt, manganese, alum, and asbestos deposits exist. There are some valuable turquoise mines in the north, and towards the south there are marble quarries. Mining concessions have been granted, but little has yet been done to develop the properties. The only Persian manufacturing industry whose product is of importance to the outside world is the hand weaving of carpets, rugs, and curtains.

The exports of Persia have a total value of about £6,000,000, and consist chiefly of fruits, raw cotton, woollen carpets, rice, fish, opium, skins, silk, gums, wool, animals, wheat and barley, hides, silk stuffs, cotton goods, timber, pearls, drugs, tobacco, and woollen stuffs. The chief destinations are to Russia (70 per cent of the total) and to Britain and her possessions (10 per cent). The imports of Britain from Persia, according to official British returns, are principally opium and gums, wheat, woollen and worsted manufactures (carpets and rugs), almonds and dates, iron ore, and raw wool.

Imports

The imports are worth about £8,000,000 annually, about half the value going from Russia, and about one-third from Britain and her possessions. But only one-third of the latter proportion goes from Britain, and that is almost entirely for cotton goods, with some woollen manufactures and copper.

Customs Duties

The following are typical of the duties levied in Persia upon imports of British produce and manufactures.—

Cotton yarn and thread, 0·69*d.* per lb.
Cotton velvets, 1·74*d.* per lb.
Woollen shawls, 5·58*d* per lb.
Steel rails, 16*s.* 3*d.* per ton.
Cutlery, mostly 2*s.* 3*d.* per cwt.
Machinery, 2*s.* 3*d.* per cwt.
Tinplates, 65*s.* per ton.
Leather belting, 9*s.* 9*d.* per cwt.
Rubber shoes, 2*s.* 3½*d.* per doz. pairs.
Wallpaper, 3*s.* 3*d* per cwt.
Oil varnish, 19*s.* 6*d.* per cwt.
Crude wax, 3*s.* 3*d.* per cwt.
Coal, free.
Cement, free.
Copperas, 130*s.* 2*d.* per ton.
Beer, 1*s.* 11½*d.* per cwt.
Fish, salted or smoked, free.
Candles, 2*s.* 7½*d.* per cwt.

No certificates of origin are necessary for goods imported into Persia.

Local Regulations

Commercial travellers in Persia are not required to take out a licence, but they must carry passports properly authorized by official representatives of the Persian Government in the countries whence they come. Duty must be paid on samples unless they are too small to have a market value. Samples of piece goods not exceeding 30 cm long are admitted free. The importation of firearms is forbidden, and samples of such goods are admitted only by the express authority of the Government.

The standard coin of Persia is the silver *kerun* or *kran*, which contains 20 shâhis, and is generally worth about 5*d*, but fluctuates with the price of silver. The weights and measures of Persia vary with the locality; for instance, the *guz* or *zer* varies from 25 in. in one district to 44 in. in another. Thus no general table of Persian standards can be given.

A passport bearing the *visa* of a Persian consular officer must be produced on entering Persia, and it should be countersigned by the Persian passport officer before leaving the country.

British Consulates.—
Teheran, Consul-General and Vice-Consul.
Resht, Vice-Consul.
Ahwaz, Consul.
Bushire, Consul-General, Consul, and Vice-Consul.
Bunder Abbas, Vice-Consul.
Lingah, Vice-Consul.
Ispahan, Consul-General and Vice-Consul.
Yezd, Vice-Consul.
Sultanabad, Vice-Consul.
Kerman, Consul.
Bam, Vice-Consul.
Kermanshah, Consul and Vice-Consul.
Meshed, Consul-General and Vice-Consul.
Turbat-i-Haidari, Consul.
Mohammerah, Consul.
Seistan and Kain, Consul and Vice-Consul.
Birjand, Vice-Consul.
Koh-i-Malik Siah, Vice-Consul.
Shiraz, Consul.
Tabriz, Consul and Vice-Consul.
Maragha, Consular Agent.

PERU

(See also South America)

Peru is the third of the South American republics in point of size, if the area given (695,700 sq. miles) be taken as accurate; but, with uncertainties of frontier lines, it is by no means certain that it is quite so large. This estimate gives the country an area about five and three-quarter times that of the United Kingdom. The white population is only 13½ per cent of the total, the pure Indian element being well over half the total, and the mixed white and Indian (mestizos) being one-quarter. There is a small negro and Asiatic element. The trade of Peru, while only one-eighth that of Brazil and one-tenth that of Argentina, is still as great as the aggregate trade of Colombia, Ecuador, and Paraguay.

Lima, the capital (140,000), is in communication by electric railway with Callao, the chief port (population, 31,000). Mollendo (2000) is the chief port of Southern Peru. It communicates by rail with the inland town of Arequipa (40,000) and with La Paz, the capital of Bolivia. Cuzco, the old capital of the Incas, has a population of 15,000.

Resources

Great variations of altitude give great varieties of climate, and both tropical and temperate agricultural products are cultivated—sugar and cotton extensively. The supply of wild rubber is so abundant that only 1 per cent of the trees can be used. Cacao and coffee, maize, wheat, manioc, rice, tobacco, ramie, wine, wax, and honey are other commercial products of the country. Attempts to cultivate silk are being made. Medicinal herbs, chiefly cinchona and coca, and dye woods are abundant. Alpaca, sheep, and llama wool are important pastoral products. There are also extensive and valuable guano deposits worked both by Government and by private enterprise. The mineral resources of the country are great, and attracted the Spanish conquerors from the time when Pizarro's band overran the country. Mining enterprise, backed by American, British, and French capital, is exploiting the silver, copper, petroleum, coal, and gold deposits. Other minerals worked a little are nickel, quicksilver, lead, vanadium, sulphur, salt, borates, and bismuth, and the unworked deposits include zinc, iron, cobalt, bismuth, and borax. Manufacturing industries are not unimportant. Their output comprises straw hats, coarse woollens and cottons, boots and shoes, candles, cigars, cocaine, wine and beer, apparel, soap, matches, furniture, saddlery, olive and cotton-seed oil.

The exports aggregate about £6,000,000 annually, and are principally sugar, minerals (chiefly silver and copper), gums (including rubber), wool, cotton, guano, leather goods, and cocaine. Half the total value of exports goes to Britain, a quarter to the United States, and smaller proportions to Chile, France, and Germany. Britain's share is 25 per cent rubber, 25 per cent cotton; and other articles of importance are wool, sugar, silver ore, copper, and guano.

Imports

Of Peru's import trade, totalling about the same as the exports, Britain and the United States have the largest share, Germany coming third. These three countries together account for two-thirds of the total. The chief classes of imports are cotton goods, iron and other metals, wheat, woollens, coal, machinery, drugs, and timber. A feature indicative of progress has been the increased importation of machinery for many years. Britain's sales to Peru annually are of the value of about £1,300,000, although occasionally, on account of certain circumstances, such as the purchase of a few ships in this country, the figure may be exceeded greatly. Of ordinary merchandise the most important class from Britain is cotton goods, which make 30 per cent of the total. Then come machinery, woollens, iron and iron goods; and of minor interest are arms and ammunition, candles, coal, electrical goods, hardware, implements and tools, and jute manufactures

No certificates of origin are required for goods imported into Peru, but the origin must be stated on the invoices, which must be legalized by a Peruvian consul. There are certain conditions and restrictions regarding the importation of seeds, cuttings, plants, and shrubs.

Local Regulations

Commercial travellers visiting Peru require no licence, except in Arequipa municipality, where a licence costs £2, 10*s.* per quarter. Samples are admitted without paying duty, upon the bond of a responsible local agent for the amount of duty upon the samples, which are examined and assessed by the officials. It is highly desirable that travellers should have credentials that will secure from a local agent the necessary undertaking. The formality costs the traveller from 10*s.* to 20*s.*, according to the number of his samples, and the time specified for re-exportation is usually ninety days. If the traveller passes from the Peruvian port of Mollendo to Bolivia and does not return to Peru, he must send a certificate signed and *visēd* by the Peruvian consul at La Paz that the samples have entered Bolivia. This releases the local agent at Mollendo from his guarantee.

The standard coin of Peru is the *libra*, which is equal to a British sovereign. 100 centavos = 1 sol (2*s.*); 10 sols = 1 libra.

For Peru, Ecuador, and Bolivia it is desirable to possess a passport in order to be able to obtain from a British diplomatic or consular officer the certificate of nationality required in the event of civil disturbances.

British Consulates.—

Lima, Consul-General and Vice-Consul.
Arequipa, Vice-Consul.
Cerro de Pasco, Consular Agent.
Mollendo, Vice-Consul.
Paita, Vice-Consul.
Perené and Chanchamayo, Vice-Consul.
Pisco, Vice-Consul.
Salaverry, Vice-Consul.
Callao, Consul-General and Vice-Consul.
Iquitos, Consul.

PORTUGAL

Portugal has an area of 34,254 sq. miles, about two-thirds as large as England. The population is a little in excess of 5,000,000. Lisbon, the capital (370,000), and Oporto (180,000) are ports and commercial centres.

Shipping and Railways

The quickest route to Portugal is overland through Paris and by the "Sud Express" direct from Paris to Lisbon. There is steamship communication between Liverpool and Lisbon and Oporto by the Booth Line and by the Pacific Steam Navigation Company; from Southampton to Lisbon and Oporto by the Royal Mail Steam Packet Company; from Southampton to Lisbon by the Deutsche Ost-Afrika Linie, and from London to Oporto by the Ellerman Line steamers.

There are over 1750 miles of railway in Portugal, of which more than one-third is state-owned The harbours on the long sea coast provide excellent trade facilities, but otherwise the communications are defective.

Resources

Industrially Portugal is a little further advanced than the nation that shares her land frontier. Of the whole area, 12½ per cent is under cereal crops, but agriculture is backward and Portugal does not meet her domestic demand for grain food. The crops of the north are barley and rye; of the south, wheat and maize. In some parts rice is grown. The mulberry tree flourishes and silk culture is important. Olives, oranges, lemons, figs, and tomatoes are grown extensively in sheltered districts, but the great fruit is grapes, which supply the wines for which Brazil and Britain are Portugal's chief customers. The stock consists of sheep, goats, pigs, and, least important, cattle. The minerals of Portugal are not exploited as they might be, this neglect being due to poverty in coal and the lack of cheap transport. Workpeople employed in and about the mines number between 6000 and 7000. The mineral output has a total annual value of about £400,000, about half of which is for copper and iron pyrites and copper precipitate, the rest being for coal, arsenic, gold, lead, tin, wolfram, and antimony. The fisheries have an output of about £1,000,000 in value, principally for sardines and tunny fish, the export trade in which is important. There is also some cod-fishing.

Although the manufactures are limited in variety and extent, considerable progress has been made in their development Textiles are the most important, and cotton goods are exported, chiefly to Africa, but woollens and silks find all their market in the country. Allied to the textile industries are the manufactures of ribbons, cotton twist, lace, embroidery, and hats There are shipbuilding yards at Lisbon, Oporto, and elsewhere. Other manufactures are copper and tin working, earthenware and porcelain, cork-working, confectionery, soap, glass, paper, tobacco, wickerwork, glass, and jewellery. The population engaged in industries other than agriculture and fishing exceeds 400,000.

Exports

Portugal's exports have an annual value of about £7,000,000, and of this value rather more than one-sixth goes to Portuguese colonies. The chief market for Portuguese produce is Britain, where over 25 per cent of the total value exported finds its way. Brazil is second in importance, taking 20 per cent of the total; then come Spain, Angola, and Germany. The most important article in the export list is wine—principally port—with over one-third of the total value. The other principal items are cork in the rough, manufactured cork, animals (principally horses, mules, and asses), copper ore, cotton manufactures, preserved fish, fruit (chiefly pineapples and figs), potatoes, timber, olive oil, hides and skins, salt, raw wool, and onions.

The British returns show the imports from Portugal as about £3,000,000 annually, which is double the true proportion, as half of the exports to Britain from Portuguese ports are not Portuguese produce. The nature of many of the goods shows that they reach Britain from Portuguese colonies via Portugal. Of the value in British official figures almost one-third is for wine, and the other chief items are rubber, manufactured cork, raw cork, fish, fruit (chiefly almonds, grapes, and apples), raw hides, locust beans, copper ore and regulus, pyrites of iron and copper, wood pulp, stones, pit props, vegetables (chiefly onions and potatoes), and wool.

Imports

Portugal's imports for consumption have a value of about £15,000,000 annually, and only 3 per cent is from her colonies. Britain, with almost 30 per cent of the total value, is the most important contributor by far, Germany, the second on the list, having little more than half the British pro-

portion. France, the United States, Spain, Russia, and Belgium are the other chief supplying countries The principal articles are wheat, iron and steel and their manufactures, cotton, coal, codfish, cotton manufactures, sugar, machinery, rice, hides and skins, maize, chemicals, wool, silk manufactures, and oilseeds.

The produce and manufactures of Britain exported to Portugal have, according to British official figures, an annual value of about £2,500,000, of which 25 per cent is for coal, the rest representing chiefly cotton manufactures, iron and iron goods, machinery, wool, jute yarn, sulphate of copper, ships and boats, tin, manure, and woollen goods.

The following are typical of the duties upon British produce and manufactures entering Portugal:—

Cotton yarn and thread—bleached and twisted —between Nos. 61 and 100, 1*s.* 6½*d.* per lb
Cotton velvets—dyed or printed, 1*s.* 10*d.* per lb.
Woollen shawls, 7*s.* 1¾*d.* per lb.
Steel rails, 5½*d.* per cwt.
Cutlery, mostly 137*s.* 2*d.* per cwt.
Machinery, steam engines, from 4*s.* 7*d.* to 11*s.* 5*d.* per cwt.
Tinplates, 8¾*d.* per cwt.
Leather belting, 22*s.* 10*d.* per cwt.
Rubber shoes, 137*s.* 2*d.* per cwt.
Wallpaper, 32*s.* per cwt.
Oil varnish, 45*s.* 9*d* per cwt.
Paraffin wax, purified, 14*s.* 10*d.* per cwt.
Coal, 1*s.* 6¼*d.* per ton.
Cement, 16*s.* per ton.
Copperas, 22*s.* 10*d.* per ton.
Beer, 1*s.* 8½*d.* per gal.
Herrings, salted or smoked, 4*s.* 7*d.* per cwt.
Candles, 27*s.* 5*d.* per cwt.

Certificates of origin are not required for British goods imported into Portugal, but "declarations of cargo" must be drawn up by persons shipping goods to Portugal and *visé* by the Portuguese consul at the port of shipment. For some goods imported under special treatment, such as petroleum from the United States, certificates of origin are required. Certificates of origin are not required in Portuguese colonies.

Local Regulations

There are no special regulations affecting commercial travellers, but any foreigner residing in Portugal for more than seven days must procure a residential licence from his consulate (fee 2*s.* 6*d.*), to be afterwards endorsed by the police (fee about 7*s.* 4*d.*). Duty is charged on samples if over 3000 reis (13*s.* 3*d.*) in value, but drawback is given if re-exportation takes place within six months.

The currency is based on the *milreis*, which contains 1000 *reis*, and is worth 4*s.* 5*d.* A sovereign is worth about 4½ milreis. The metric system of weights and measures is in use (see "France").

British Consulates.—
Lisbon, Consul and Vice-Consul.
Belem, Vice-Consul.
Faro and Tavira, Vice-Consul.
Portimão, Vice-Consul.
Setubal (St. Ubes), Vice-Consul.
Villa Real de San Antonio, Vice-Consul.
Oporto, Consul and Vice-Consul.
Figueira, Vice-Consul.
Leixões, Vice-Consul.
Vianna and Caminha, Vice-Consul.

Azores

These nine islands, which are regarded not as colonies but as an integral part of Portugal, have an area of 922 sq. miles and a population of about 257,000. The capital is Angra (11,000), in the island of Terceira, but Ponta Delgada (18,000) in St. Michael is larger than the capital. There are sailings twice monthly to the Azores from Lisbon and Madeira by the Empreza Insulana, and a frequent service by White Star steamers sailing between Mediterranean ports and Boston and New York. The products of the soil are fruits and wine. St. Michael oranges are famous, but the production is much smaller than it used to be, other crops having proved more remunerative. The other fruits are yams and bananas; sugar, tea, and coffee are grown. The fisheries are valuable, principally cod, but also some whale. There are some manufacturing industries — chiefly domestic — including cottons, woollens, linens, hats, baskets, mats, pottery, bricks, tiles, butter, cheese, and soap. The islands have become a favourite resort, chiefly with Americans. The trade figures for Portugal include the Azores. Exports to Britain have a value of about £60,000 annually, almost exclusively for fruit and fish oil. Imports from Britain have a value of about £50,000 annually, the principal value being for coal.

British Consulates.—
St. Michael (Azores), Consul and Vice-Consul.
Fayal, Vice-Consul.
Flores and Corvo, Vice-Consul.
St. George, Consular Agent.

Madeira

The island of Madeira, which is also politically an integral part of Portugal, has an area of 314

sq. miles and a population of about 150,000. Funchal, the capital and port, has a population of over 20,000. It is a calling port for the Union-Castle Mail steamers sailing weekly from Southampton to Cape Town, and is also reached by the Booth Line from Liverpool, by the Hamburg-American Line from Hamburg, Antwerp, Bologne, and Lisbon, and by steamers from Marseilles, Lisbon, and other South European ports The principal products of the island, which is a favourite and inexpensive winter resort, are wine, sugar cane, cochineal, fruit, vegetables, and fish. There are some manufactures of linens and woollens, straw hats and baskets, butter, sugar, soap, knitted shawls, and filigree silver work. The figures of trade given for Portugal include Madeira. British imports from Madeira have an annual value of about £40,000, most of the value being for wine, the other items being vegetables, fruit, and basketwork. British exports to Madeira have a value of about £200,000 annually, two-thirds of the total being for coal, with machinery occasionally an important item.

British Consulates.—
Funchal, Consul and Vice-Consul.

Cape Verde Islands

There are fourteen islands, with a total area of 1480 sq. miles and a population of about 150,000, including about 4000 whites. The capital is Praia and the chief port is St. Vincent, which is reached by steamer from Lisbon. The principal produce consists of coffee, nuts, salt, and hides. Lace, embroidery, and straw hats are made. The exports have a value of about £80,000, and imports of about £400,000, chiefly for coal. The trade with Britain is included in the figures for Angola.

Passports are not required, except in times of public danger, but they are useful in view of the fact that all foreigners have personally to register themselves at the mayor's office as soon as possible after arrival.

British Consulates.—
St. Vincent, Consul and Vice-Consul.
St. Jago, Consular Agent.

Angola

This colony, sometimes called Portuguese Lower Guinea, has an area of 485,000 sq. miles and a population of over 4,000,000. The capital is St. Paul de Loanda, with a population estimated at over 200,000, which is reached by some steamers from Hamburg and others from Lisbon. There are good possibilities for agriculture, but little has been done, and trade is chiefly by barter. The principal products are rubber, coffee, sugar, ivory, and oils. Gold and other minerals have been found Several companies have obtained concessions to work the resources of the country. The exports have a value of about £1,000,000, and the imports of about £1,250,000. Exports to Britain, which include the trade of the Cape Verde Islands, of Portuguese Guinea, and of St. Thomé and Principé, have a value of about £100,000 annually, principally for rubber, cocoa, palm oil, and nuts for oil expression. The exports from Britain to Portuguese West Africa have a value of about £500,000 annually, about half being for coal sent chiefly to St. Vincent, the coaling station in the Cape Verde Islands. The other principal articles of British exports are cotton goods and iron.

British Consulates—
Loanda, Consul and Vice-Consul.
Lobito, Vice-Consul.

St. Thomé and Principé

These Portuguese West African Islands have an area of 360 sq miles and a population of 42,000. The chief port is St. Thomé, which is reached from Lisbon by West African steamers. The principal product is cocoa, and these islands contribute one-fifth of the world's supply. Other products are coffee, rubber, cinchona, cotton, sugar, indigo, sweet potatoes, and dates. The exports have a value of about £1,500,000 annually, and the imports of about half that value. The trade with Britain is included in the figures given for Portuguese West Africa. (See "Angola", above.) Britain's purchases of St. Thomé cocoa ceased, owing to the slavery system under which cultivation is prosecuted.

British Consulate.—
St. Thomé, Vice-Consul.

Portuguese Guinea

Portuguese Guinea is entirely enclosed on the land side by French Guinea. Its area, including the Bissagos Islands, is 13,940 sq. miles, and its population 820,000. The capital, Bolama, stands on an island of the same name; and the chief port is Bissau. The chief products are rubber, wax, oilseeds, ivory, and hides. The exports are valued at about £100,000, and the imports at about £200,000. The trade with Britain is included in that of Angola.

British Consulates.—
Bolama, Consul-General.
Bissau, Vice-Consul.

Portuguese East Africa

The area is about 300,000 sq. miles, and the population is about 3,000,000 The principal towns and ports are Lourenço Marques (10,000), from which a railway runs to Pretoria and Johannesburg, and Beira (4000), which is the terminus of the Rhodesian railway system. Lourenço Marques is the nearest port to Johannesburg, and Beira is the port of Salisbury and South-eastern Rhodesia. To their positions in regard to the British South African colonies these ports owe their chief commercial value. The other ports are Mozambique (5500), Chinde (3000), Quilimane (3000). These are ports of call by the steamers of the German East Africa Line sailing from Hamburg, Rotterdam, and Southampton. The principal products of the colony are rubber, sugar, coconuts, beeswax, gold, copper, and coal. The exports have a value of about £300,000. The imports approach £1,500,000, chiefly to Lourenço Marques and Beira, from which much of the imports find their way ultimately into British South Africa. The transit trade through Lourenço Marques and Beira is great, that through the former port alone being worth about £5,000,000 annually. Portuguese East Africa has a special customs arrangement with the British South African Customs Union. British imports from Portuguese East Africa have, according to Board of Trade returns, a value sometimes approaching £300,000, consisting chiefly of ores of gold, tin, and copper, rubber, coffee, ivory, and wax, but a fair part of this value is for goods in transit from British South Africa that may find a brief resting-place in Portuguese ports The same remark applies to British exports to Portuguese East Africa, which, according to British statistics, have a value of about £2,000,000, the chief items being iron, machinery, vehicles, cottons, apparel, candles, and soap.

The Portuguese East Africa trading licences have been adopted in the territories of Manica and Sofala. Commercial agents importing goods by sea must pay £40 per annum. If the commercial agents are engaged only in forwarding goods into Rhodesia and not in selling in Portuguese territory, the tax is £10 If the commercial agent conducts business only in the Portuguese territory, the tax is £5 per annum. Foreign commercial travellers must pay a tax of £10 per annum.

British Consulates.—

Lourenço Marques, Consul and Vice-Consul.
Beira, Vice-Consul.
Mozambique, Vice-Consul.
Quilimane, Consular Agent.
Chinde, Consul.

Portuguese India

Portuguese India consists of Goa, Damao, and the small island of Diu, the whole having an area of about 1640 sq. miles and a population of about 540,000. The capital is Panjim, with a population of about 8500, in Goa. It is connected with the British Indian railway system, and is visited by coasting steamers. There is little enterprise in Portuguese Indian possessions, which cannot be described as flourishing. Numerous salt works employ over 2000 men. There is a fair transit trade, and Goa is within the Indian Customs zone. The total exports are worth about £140,000 annually, and imports about £400,000. Exports to Britain fluctuate very much, but have exceeded £250,000 in one year, the chief items being manganese ore, cotton seeds, and coffee. Similar conditions obtain with imports from Britain, the chief articles in which are machinery, iron, coal, and railway carriages.

British Consulate.—

Marmagão, Consul.

Macao

This Portuguese station in China has an area of 4 sq. miles and a population of 64,000. The chief occupation is gambling, for Macao is the Monte Carlo of the Far East. She has declined with the rise of Hong Kong. The harbour is silted up, and ocean ships can no longer find a safe channel, but the port is visited by junks and coasting vessels. There is a transit trade—exports about £1,400,000 annually and imports £1,800,000. There is no trade with Britain.

Timor

The Portuguese portion of this island has an area of about 7300 sq. miles and a population of about 300,000. The port is Dilly, which is reached by the steamers of the Eastern and Australian Steamship Company sailing from Sydney and Brisbane to Hong Kong and Shanghai. The resources of the island lie unexploited and undisturbed. A little coffee, sandal wood and root, and wax are exported. Exports have a value of about £80,000 yearly and imports £70,000. There is no trade with Britain.

Passports

For residence in Portugal or Portuguese colonies a passport or other proof of nationality is generally required.

RUMANIA

The area of Rumania is 50,700 sq. miles, so that it is just a little larger than England. The population is about 6½ millions Bucharest, the capital, has a population of about 300,000. The only seacoast is on the Black Sea, and the chief Rumanian seaport is Constantza, with a population of about 16,000 The Danube ports are Sulina (6000), Tulcea (19,000), Galatz (65,000), Braila (60,000), Giurgiu (14,000), and Turnu-Severin (20,000).

Shipping

Bucharest is reached from Western Europe via Vienna, from which it is about twenty-five hours distant by rail. There is steamer service from Hamburg and Antwerp to Galatz and Braila every two or three weeks by the German Levant Company, from Constantinople by the Austrian Lloyd Company and by the Italian General Navigation Company weekly. There is no service of steamers between American ports and Rumanian ports.

There are 2000 miles of state railway line in operation in Rumania, and the Danube offers excellent and economical water transport, a service of which is organized by the Government railway administration.

Resources

Commercially, Rumania is the most prosperous of the Balkan States. It is primarily an agricultural and pastoral country, and over 70 per cent of the population finds employment in husbandry. The great cereal crops are maize and wheat, and almost 80 per cent of the corn-crop acreage is under these. Less important cereals are barley, oats, rye, millet, and buckwheat. Of other crops, grapes and plums have the largest area, and less important are colza, potatoes, sugar beets, and onions. The only fibre crops are flax and hemp to a fair extent, the former being far the larger. Tobacco is cultivated. The meadow lands exceed 1,000,000 acres. There are over 11,000,000 domestic animals; half the number are sheep, over 20 per cent cattle, and almost 20 per cent pigs, the remainder being horses and goats. About one-tenth of the area of the country is forest, the principal timbers of commercial value being oak, fir, and beech.

The country is rich in non-metallic minerals. The deposits of rock salt seem to be inexhaustible, and their working is a state monopoly. Petroleum is worked by both state and private enterprise, and the output of the oil wells is large and increasing. The coal output is moderate but progressive. Copper is the only metallic ore found, but it has never been properly exploited

Of the industries, the preparation of tobacco as well as salt-mining is a monopoly of the state. Manufacturing industries are concerned with domestic commodities—milling, brickmaking, pottery, basketwork, and clothing Textile manufactures employ about 1000 people, and the tanning industry not so many.

Trade is rather active. About 5 per cent of the population is Jewish, and these are the traders of the country, although they labour under certain restrictions; but the native Rumanian has never pursued the paths of commerce with enthusiasm or success.

Exports

Rumania's exports have a value of about £20,000,000. The chief market is Belgium, where 30 per cent of the total value finds its way, and the next most important purchasers are Britain, Italy, France, Austria, Germany, and Turkey. The chief export is wheat, which constitutes almost 50 per cent of the total value, and the other grains (maize, barley, and rye) raise the entire cereal proportion to about 80 per cent of the total. The other principal articles are wood, seeds, raw wool, raw hides, and petroleum.

The British returns show that her imports from Rumania are sometimes below £2,000,000 in value and sometimes above £5,000,000, this being due to fluctuation in the Roumanian cereal crops, and changes in its destinations due to market movements. Over 90 per cent of the whole value is for cereals—maize, wheat, barley, and oats—the remainder being for raw petroleum, sawn wood, and some seeds.

Imports

Rumania's imports have a value of about £16,000,000 annually. Germany and Austria-Hungary provide between them about 60 per cent of the total, and Britain comes next with about 15 per cent. The imports are general, the principal values being for cotton goods, woollens, machinery, coal, coffee, rubber goods, jute manufactures, olive oil, and silks.

Britain's exports to Rumania are about £2,000,000 annually, half the value being for

cottons, chiefly piece goods. The only other important departments are iron, machinery, and woollens. British traders should be very careful in giving credit in some parts.

Customs Duties

The following are typical of Rumanian duties upon produce and manufactures of the United Kingdom —

Sewing thread, undyed, prepared for retail sale, 2·18*d.* per lb.
Cotton velvets, printed, 6·53*d.* per lb.
Woollen shawls, 1*s.* 1*d* to 2*s.* 2¼*d.* per lb
Steel rails, 1*s.* 2¾*d* per cwt.
Cutlery, mostly 40*s.* 8*d.* per cwt.
Machinery, from 2*s* 5½*d* to 4*s* 10½*d.* per cwt.
Tinplates, from 2*s.* 10*d.* to 3*s.* 3*d.* per cwt.
Leather belting, 61*s.* per cwt
Rubber shoes, 48*s* 9*d.* per cwt.
Wallpaper, 20*s* 4*d.* per cwt.
Oil varnish, 10*s.* 2*d* per cwt.
Paraffin wax, 20*s.* 4*d.* per cwt.
Coal, mostly 1*s.* 7½*d.* plus excise duty of 9½*d.* per ton.
Cement, 16*s.* 3*d.* per ton.
Copperas, 12*s.* 2½*d.* per ton.
Beer, in casks, 12*s.* 2½*d.* per cwt.
Herrings, dried and salted, 8*s.* 1½*d.* per cwt.
Candles, paraffin, 40*s.* 8*d.* per cwt.

Certificates of origin are not necessary for goods imported into Rumania. If the goods have been transhipped, the certificate of the customs where transhipment has been effected must be produced. Consignees must send to the customs within ten days of receipt of the goods a duly signed copy of the invoice stating the price of the goods.

Local Regulations

Commercial travellers visiting Rumania must be provided with a passport and certificate of legitimation, the latter being obtainable from Chambers of Commerce in Britain. If orders are taken from private householders, a quarterly licence, the cost of which varies in different trades, is necessary. Samples of value are admitted on guarantee or deposit, which is refunded on re-exportation. Aliens travelling in Rumania must obtain permits, which are issued on presenting passports to prefects of police.

The monetary unit is the *leu* or leo (plural lei), which contains 100 bani, the two coins being of the value of a franc and a centime respectively. (See "France".)

The metric system of weights and measures is used, although the old Turkish standards still obtain commercially to some extent.

Persons travelling in Rumania must be provided with passports bearing the *visa*. A fresh *visa* must be obtained for each journey. On arrival persons should at once obtain the *visa* of the British Legation or of a British Consulate, and then, within twenty-four hours of arrival, apply to the Rumanian authorities for a permit to reside in the country. For a stay of less than eight days this formality may be dispensed with, and the permit will be stated upon the passport by the police officials at the frontier.

British Consulates.—
Bucharest, Consul and Vice-Consul.
Braila, Vice-Consul.
Constantza, Vice-Consul.
Galatz, Vice-Consul.
Sulina, Vice-Consul

RUSSIA

The Russian Empire has an area of 8,647,000 sq. miles. This area is just about that of North and Central America and the West Indies combined; it is considerably larger than South America; it is more than twice as large as Europe, and about seventy times the size of the United Kingdom. One-quarter of the total area is in Europe and the rest in Asia. The total population is about 160,000,000, of whom only 27,000,000 are in Asiatic Russia. Finland, which has an area of 126,000 sq. miles, being, therefore, a little larger than the United Kingdom, and having a population of about 3,000,000, is included in the above figures.

The capital of the Russian Empire is St. Petersburg, which has a population of about 1,700,000. The other largest cities in European Russia are Moscow, 1,400,000; Warsaw, 760,000; Odessa, 460,000; Lodz, 360,000; Kiev, 320,000; Riga, 290,000; Kharkov, 174,000; and Vilna, 163,000. In Finland the only large city is Helsingfors, 131,000; in Siberia the chief towns are Vladivostok, the Pacific port, 38,000; Tomsk, 67,000; Irkutsk, 70,000; and Tobolsk, 21,000; the chief town in the Kirghiz Steppes, or West Siberia, is Omsk, 37,000; in Russian Turkestan the chief towns are Tashkent, 155,000; Samarkand, 58,000; and Namangan, 62,000. The chief towns in Caucasia are Baku (179,000) and Tiflis (160,000). St. Petersburg, Reval, Libau, Windau, and Riga are the Baltic ports of Russia; but only Libau is open nearly the whole year, the others being frozen up for four or five months every year. Odessa is the great port of

the south, with Taganrog, Novorossisk, Sevastopol, and Batoum, all in the Black Sea. The ports of the White Sea are Archangel and Onega, both of which are icebound for more than half the year, and the Pacific port is Vladivostok.

Shipping and Railways

The quickest route to St. Petersburg is by Dover, Calais, and Berlin, which takes fifty-five and a half hours from London There is direct steamship communication between Hull and Libau, Odessa, Reval, Riga, and St. Petersburg by the Wilson Line; between London and Riga by the Wilson Line; and between London and St. Petersburg by the United Shipping Company's steamers. There is direct service from Hull to Helsingfors and Abo by the Finland Line. The Black Sea ports of Russia are in communication with Marseilles and other Mediterranean ports by the Messageries Maritimes and other lines. The only line forwarding a direct service between the United States and Baltic Russia is the Scandinavian-American Line, which connects St. Petersburg and New York. The only route between Southern Russia and the United States is the Levant Line, which connects Odessa and New York.

Russia in Europe has over 34,000 miles of railway, and Asiatic Russia has over 10,000 The river communications, especially in European Russia, are good and cheap. The roads through European Russia are good, and the villages are more thickly set together than in any country in Europe. In Asiatic Russia communications are mainly confined to the railway.

Resources

In European Russia about 40 per cent of the total area is forest land, and the principal trees are fir, larch, elder, and birch. But the forests are chiefly in the north; in the central and southern districts there is a serious deficiency of timber, and fuel is often very scarce. Two-thirds of the forest area is state-owned. Agriculturally, Russia excels as a cereal country, and an improved practice is being encouraged by Government through the medium of model farms and agricultural courses in the universities. From the southern ports of Russia Britain draws one-third of her supply of imported barley, besides wheat, rye, maize, and oats. The principal crops of Russia are rye, wheat, oats, barley, millet, buckwheat, maize, lentils, potatoes, flax and hemp, hops, tobacco, and sugar beets. All the fruits of the temperate zone are grown, and in the south there is a considerable wine and silk industry. In European Russia alone the domestic animals number considerably over 100,000,000, chiefly sheep, cattle, and horses, with smaller numbers of pigs, and goats Poland is one of the principal pork-breeding countries in Europe. The mining production of Russia in Europe consists of the following minerals: coal, naphtha and mineral oil, salt, manganese ore, copper, zinc, mercury, lead, gold, silver, and platinum. Russia is seventh of the world's countries in coal output, but the production is less than one-tenth that of Britain. Of the entire mineral output of Russia the products of the oil fields of the district of Baku in Caucasia are of first importance to the outside world. The total output is 30 per cent of the world's output, and it is half as big as that of the United States.

The rivers of the Caspian basin and of the Sea of Azov are famous for their sturgeon, the source of isinglass and of caviar, and there are also valuable salmon fisheries in the same districts.

Industrially, as well as politically and educationally, the Grand Duchy of Finland is more advanced than any other portion of the Russian empire. The state-owned forests have an area of about 14,000,000 acres, and timber is one of the chief products and articles of export, greatly facilitated by an excellent system of canals. Potash, pitch, tar, and resin are side products of considerable export value. The cereal products are rye, oats, and barley, and, after agriculture, stock-breeding and fishing are the principal occupations. The principal minerals are iron, copper, marble, and sulphur.

Asiatic Russia from the Urals to the far Pacific is a vast expanse of territory, the value of whose resources is only the subject of a rough guess. The mineral wealth of Siberia is great, and this department of her resources is the subject of attention and capital expenditure. It seems certain that gold exists there in greater abundance than in any other part of the Old World. The eastern slopes of the Urals have long been known to be auriferous, but some of the eastern regions, particularly Tomsk and Yeniseisk, have been proved to contain large tracts of gold-bearing schists and limestones. The other notable minerals of Siberia, so far as is known, consist of iron, copper, silver, platinum, tin, lead, and zinc. Operating mines and quarries yield gold, silver, copper, emerald and topaz, jasper and porphyry, lapis lazuli, diamonds, malachite, and mica. Ivory, from the fossil mammoths of the icy north of Siberia, has been in active commerce for centuries. The agricultural possibilities of Siberia draw a steady stream of immigrants from European Russia, attracted by the offer of 40 acres of land free and

three years' exemption from taxation. This immigration has sometimes been well over 500,000 in a single year The central zone of Western Siberia is bound to become a great wheat-producing country, and three-quarters of its population at present find their livelihood in agriculture. Wheat, oats, and rye are the most important crops. But before a successful agriculture can become widespread, a network of railway lines must be called into being. The existing trunk line through Siberia, excellent in its service and luxurious in the appointments of its passenger traffic, pierces the vast expanse, but is inadequate to serve it. Thousands of miles of feeding lines are necessary to develop the latent agricultural and mineral wealth of the country.

The products of Russian Turkestan, in which Russian authority has been the cause of immense good to the country, are principally cotton, rice, and silk. Since the introduction of American seed in 1883, the cotton crop has attained an annual value in excess of £10,000,000, and the cotton mills of Moscow and Poland depend chiefly upon Turkestan for their raw material.

Manufactures

By fiscal duties and by the establishment of large model manufactories, the Government of Russia attempts to urge its people along the road of manufacturing enterprise. A fair success has attended this fostering policy. About 20 per cent of the capital invested in such enterprises is foreign capital. The principal departments where progress is evident are leather and morocco leather, textile threads and fabrics (cottons, woollens, linens, and silks), fine shawls, carpets, cordage, metals (chiefly iron and copper), firearms and cutlery, plate glass and crystal, paper, hosiery, oil, candles, soap, glue, and tobacco. The total number of the industrial army engaged in manufacturing is over 2,000,000, and is rapidly increasing. The beet-sugar production of Russia is just about equal to that of Austria-Hungary, but is excelled by that of Germany. The only manufactures of Asiatic Russia are of purely local importance.

Exports

The exports of Russia have an aggregate value between £100,000,000 and £120,000,000 annually. The figures include the trade to Finland, the exports to which amount to about £5,000,000. Germany takes about 25 per cent. Britain is next with over 20 per cent, and Holland is third with about 10 per cent. The next most important customers of Russia are France, China, Italy, Austria, Belgium, Persia, and Denmark. The United States buys only about one-half of 1 per cent of the total, the reason being that Russia's main exports are commodities of which the United States has a superabundance. The staple produce exported by Russia is cereals, the value of which to all foreign markets is half or fully half the total export value. Forty or fifty per cent of the cereal value is for wheat, some 25 per cent is for barley, and the other cereals and cereal products exported are oats, rye, bran, wheat flour, peas, maize, and rye flour. After cereals the important articles are timber and wooden goods, flax, eggs, dairy produce, furs, leather, oilcake, naphtha and naphtha oils, oleaginous and other grains, metals (chiefly platinum), sugar, hemp, fowls and game, manganese ore, horses, bristles, hair, and feathers, wool, fish and caviare, guttapercha, alcohol and alcoholic liquors, tobacco, metallic goods, cottons, and woollens.

Of Britain's imports from Russia, cereals are the most important group, the total annual value sometimes being in excess of £15,000,000. Wheat is the most important of the cereals, and reaches us chiefly from Southern Russia. It is followed by barley, oats, and maize. The next most important group is timber, the total exports to Britain sometimes totalling over £8,000,000, chiefly for dressed fir. Dairy products—butter and eggs —are next, with an annual value about £6,000,000. Flax is the only other product that reaches over a million sterling, and it is generally about twice as much. These several groups constitute three-quarters of Russia's exports to Britain, and no other individual articles approach any of them in the value of annual trade. Other noteworthy exports to Britain are the following: linseed and miscellaneous oilseeds, petroleum, sugar, oilseed cake, hemp, poultry and game, wool and camels' hair, hides, skins and furs, manganese ore, paper, paper-making materials, bristles, and bacon.

Imports

Russia's imports have an annual value of about £80,000,000 sterling. The chief contributor is Germany, with three-eighths of the total. The United Kingdom has second place with about one-sixth. China, the United States, Finland, France, Persia, and Austria divide the rest. The principal commodities or groups of commodities in the import trade are the following: raw cotton, machinery, leather, hides, and skins, metal goods, cotton and other textile goods, coal and coke, tea, timber and wooden goods, wool, fish, rubber, metals, silk, chemicals, cereals, spirits, wool yarn, and colours.

In the trade from Britain to Russia, which amounts to about £12,000,000 annually, the principal class is machinery and steam engines (chiefly sewing machines, textile machinery, and agricultural machinery), which have a value of about £3,000,000 annually Coal and coke amount to about £2,000,000, and herrings to over £1,000,000. These classes account for about half of the total trade. The other articles of importance are cottons (chiefly yarn), wool, iron, woollen yarn, chemicals, lead manufactures, tin and its manufactures, implements and tools, alpaca and mohair yarn, woollens, leather, ships, grease and tallow, manure, rubber, copper goods, hardware, and paraffin wax.

The establishment of a Russo-British Chamber of Commerce, the desire on political grounds to do business with Britain, the more intelligent cultivation of the Russian trade by British firms, and participation in Russian trade exhibitions, as well as much-needed improvements in the British Consular Service, are factors having much to do with the extension of Anglo-Russian trade. Special openings for trade worthy of study occur from time to time, such as cold storage and refrigerating plant, commercial and private motors. The Russian Far East has been regarded by the British trader with unjustifiable apathy, owing perhaps to an unfounded opinion as to the vexatious requirements from travellers.

Customs Duties

The following may be taken as typical of the duties levied upon British produce and manufactures entering Russia:—

Cotton twist, on spools from Nos. 60 to 80, 1¾*d.* per lb.
Cotton velvets, 2*s.* 7*d.* per lb
Woollen shawls, 10*s.* 6*d.* per lb.
Steel rails, 5*s.* 11*d.* per cwt.
Cutlery, common, 134*s.* per cwt.
Machinery, steam engines, 21*s.* per cwt.
Tinplate, 17*s.* 5*d.* per cwt.
Leather belting, 78*s.* 8*d.* per cwt.
Rubber shoes, 11¾*d.* per lb.
Wallpaper, 59*s.* 1*d.* per cwt
Varnish, 108*s.* 4*d.* per cwt.
Paraffin wax, 21*s.* 9*d.* per cwt.
Coal, 1*s* 11¾*d.* per ton to Baltic ports or 7*s.* 11*d.* per ton to Black Sea ports.
Cement, 15*s.* 8½*d.* per ton.
Copperas, 43*s.* 3*d.* per ton.
Beer, in casks, 23*s.* per cwt.
Herrings, cured or salted, 4*s.* per cwt.
Candles, 33*s.* 1*d.* per cwt.

Certificates of origin are not required for goods imported into Russia.

The following are typical of duties upon imports into Finland from Britain:—

Twisted thread, 3·07*d.* per lb.
Cotton velvets, 1*s.* 2¼*d.* per lb.
Woollen shawls, 6*s.* 10*d.* per lb
Steel rails, free.
Cutlery, 47*s.* 9½*d* per cwt.
Machinery, 5*s.* 11¼*d.* per cwt.
Tinplate, 3*s.* 4*d.* per cwt.
Leather belting, 5*s.* 11¼*d.* per cwt.
Rubber shoes, 5·12*d.* per lb.
Wallpaper, 21*s.* 6*d.* per cwt.
Varnish (oil), 19*s* 1¼*d.* per cwt.
Paraffin wax, free.
Coal, free.
Cement, free.
Copperas, 38*s.* 2*d.* per ton.
Beer, in casks, 12*s.* 2½*d.* per cwt.
Herrings, salted or cured, 2*s.* 0½*d.* per cwt.
Candles, 8*s.* 7½*d.* per cwt.

Local Regulations

The commercial traveller visiting Russia must have a personal licence (50 roubles = £5, 5*s.* 6*d.*) and a trading licence (150 roubles = £15, 16*s.* 6*d.*). He must also pay provincial dues (about £5, 5*s.*) and town dues (about £5, 5*s.*) and various local dues if visits are made to towns without municipal organization. To take out a trading licence the traveller must show a power of attorney or letter of authority from his firm, and must show a "certificate of licence to trade", issued by a British Chamber of Commerce. If certificates are taken out during the latter half of the year, only half fees need be paid. Duty must be paid on samples, but it is refunded if the goods are re-exported. Luggage allowed on railways, 36 lb. Excess to any weight can be taken if paid for. In Finland there are no taxes or regulations affecting commercial travellers, and the Russian conditions do not apply.

The standard coin of Russia is the *rouble*, which contains 100 kopecks and is worth 2*s.* 1½*d.* It is usually reckoned that the British sovereign equals 9·46 roubles. The Russian weights and measures are as follows:—1 pound = 0·90283 lb. avoird.; 40 pounds = 1 pood = 36 lb. avoird.; 10 poods = 1 berkovets = 360 lb avoird.; 1 tchetvert = 5·77 imperial bushels; 1 vedro = 2·7 imperial gallons; 16 vershoks = 1 arshin = 28 in.; 3 arshins = 1 sajene = 7 ft.

In Finland the monetary unit is the *markka*, which contains 100 penni and has the same value as a franc (see "France"). The metric system of weights and measures is used.

Visitors to Russia must be provided with passports bearing the *visa*. Without such *visa* they

will not be allowed to enter the country. To persons of the Jewish faith the *visa* will not be granted unless they are bankers or persons of the highest social standing.

The passport will enable the holder to reside in Russia for six months, when it must be exchanged at the Prefecture of St Petersburg, or at the Chancery of a Provincial Governor, for a Russian "Billet de Séjour", to be renewed annually.

The cost of such a "Billet de Séjour" varies from 7 r. 15 c. to 1 r. 29 c. Each "Billet de Séjour", on first issue or renewal, must be delivered to the local police officer for inscription or *visa*. For non-renewal of a "Billet de Séjour" at the time of its expiration a fine is exacted.

On leaving Russia a police certificate must be obtained, which is granted on the first visit of the traveller to Russia at a cost of 75 copecks. On subsequent visits 6 r. 50 c. is charged. If a "Billet de Séjour" has been obtained it must be returned, when the passport will be handed back to the owner with the necessary authorization to leave.

In the case of persons travelling through Russia, without stopping at any point within the empire, the *visa* of a Russian Consular Officer "to travel through Russia" will be accepted as sufficient, both for the purpose of entering and leaving the country, without obligation to obtain the police authorization to leave necessary in case of a stay in Russia.

Travellers in Russia should on each journey obtain a new passport to avoid the necessity of obtaining a "Billet de Séjour" on arrival, which they will be required to do when a passport is used six months after the date of the Russian *visa* attached to it.

British Consulates.—

St. Petersburg, Consul and Vice-Consul.
Archangel, Vice-Consul.
Cronstadt, Vice-Consul.
Narva, Vice-Consul.
Reval, Vice-Consul.
Batoum, Consul.
Baku, Vice-Consul.
Novorossisk, Vice-Consul.
Poti, Vice-Consul.
Helsingfors, Consul.
Åbo, Vice-Consul.
Bjorneborg, Vice-Consul.
Borgå, Consular Agent.
Gamla Karleby, Vice-Consul.
Hango, Vice-Consul.
Kotka, Vice-Consul.
Kristinestad,
Lovisa, Vice-Consul.
Nicolaistadt (Wasa), Vice-Consul.
Tammerfors, Vice-Consul.
Uleaborg and Kemi, Vice-Consul.
Viborg, Vice-Consul.
Kiev, Consul.
Moscow, Consul and Vice-Consuls.
Omsk, Vice-Consul.
Odessa, Consul-General and Vice-Consul.
Berdiansk, Vice-Consul.
Eupatoria, Consular Agent.
Kertch, Vice-Consul.
Kharkov, Vice-Consul.
Kherson, Vice-Consul.
Mariupol, Vice-Consul.
Nicolaiev, Vice-Consul.
Rostov-on-Don, Vice-Consul.
Sevastopol, Vice-Consul.
Taganrog, Vice-Consul.
Theodosia, Vice-Consul.
Riga, Consul and Vice-Consul.
Libau, Vice-Consul.
Pernau, Vice-Consul.
Windau, Vice-Consul.
Vladivostok, Vice-Consul.
Warsaw, Consul and Vice-Consul.

SALVADOR

(See also Central America)

The small state of Salvador has a seaboard only on the Pacific. It is the most densely populated of the Central American States, showing about 150 inhabitants per square mile. It is a progressive little state, and its resources are being developed by local and foreign enterprise. There is a small white population. The capital is San Salvador, with a population of about 60,000; the other principal towns are Santa Ana (48,000), San Miguel (25,000), Nueva San Salvador (19,000), San Vicente (18,000), and Sonsonate (17,000). The ports are Acajutla, La Libertad, and La Union. From the first-mentioned port a railway runs to the capital and other towns, and other railways are in course of construction or in contemplation.

Resources

Agriculture is the chief occupation of the inhabitants of the republic, and the principal crops are coffee, indigo, rubber, cacao, balsam, tobacco, grains, seeds, and fruits. Cotton-growing is encouraged by Government bounty. Gold and silver are mined, and their exploitation is attract-

ing capital. Minerals known to exist, but not worked, include copper, iron, and mercury.

The great export, representing 70 per cent of total export value, is coffee, which goes chiefly to France, United States, Germany, Britain, Italy, and Australia. The other exports are indigo, balsam, tobacco, gold, and sugar. The total value of exports is about £1,000,000 annually. Practically the only products of Salvador purchased by the United Kingdom are coffee and indigo, and the quantity fluctuates very much from year to year.

Imports

The imports of the republic aggregate a value of about £1,000,000 yearly, the chief items being cotton goods, drugs, hardware, flour, silk goods, and yarn. The chief imports from Britain are cotton goods (almost two-thirds of the total), empty bags, machinery, metal goods, and woollens. Britain supplies about 30 per cent of the total imports, and the United States an equal amount.

Certificates of origin are not required for British goods imported into Salvador.

Local Regulations

The currency is based on the dollar (of 100 centavos), which is worth about 1*s.* 7*d.*

British Consulates.—

San Salvador, Consul and Vice-Consul.

La Union, Vice-Consul.

SERVIA

Servia has an area of 18,645 sq. miles — 2½ times as large as Wales—and its population is under 3,000,000. Belgrade, the political capital and commercial emporium of the country, has a population of about 80,000, and no other town has one-third of that number.

Railways and Rivers

The Servian state railway is an integral portion of the through railway from Vienna to Constantinople. The mileage of that line with its subsidiary branches is 420 miles. The Danube and its tributaries, the Save and the Drina, all of them delimiting Servia and not penetrating the country, provide about 400 miles of navigable waterway, and communication thereon is given by the Servian Steamboat Company and by the boats of several foreign companies. The roads throughout the country are poor on the whole.

Belgrade is reached from Britain via Paris by the "Orient Express", via Ostend and Brussels by the "Ostend-Vienna Express", or by the ordinary express service from Vienna, from which it is fourteen hours distant.

Resources

Servia is agricultural under peasant ownership of land, and in it alone among European countries it may be said that there are no indigent. Over one-third of the area is cultivated, and almost one-third is under forest. The principal crops are maize, wheat, barley, and oats, the first-named being, in acreage and production, as important as the other three combined, and wheat being more important than the remaining two combined. Grapes and tobacco are grown, hemp and flax have a moderate tillage, and one-sixth of the cultivated area is meadow grass. The great fruit crop is plums, which are exported both fresh and as marmalade. Sericulture employs many people, and the product in cocoon silk is an important but fluctuating article of export.

The forest timbers are beech, oak, and fir; staves for casks are exported in great quantity, the chief markets being Austria and France. Domestic animals are bred and exported. Numerically, more than half the stock is sheep, with cattle and pigs next and equal in numerical importance, while goats and horses complete the list. The rich mineral deposits are slow in development, owing to poor roads and lack of other economical transport, but gold, copper, lead, zinc, antimony, and silver are worked to some extent. Iron is abundant, but of little commercial value, and the other minerals found, but not worked, are asbestos, arsenic, quicksilver, graphite, gypsum, marble, sulphur, and petroleum shale.

The industries, in spite of Government attempts to foster them by free grants of land, exemption from taxation, preferential railway rates, and other facilities, are not important. Plums are preserved and distilled; brewing, sugar-making, weaving, tanning, boot manufacture, and ironworking are carried on, and there is a pottery and also a celluloid factory.

The exports of Servia are valued at about £3,000,000 annually, and until 1906 five-sixths of the trade was with the countries of the Dual Monarchy. That year the Austrian proportion fell to less than half the total, while Germany increased her purchase by 800 per cent, Turkey by 140 per cent, and Bulgaria by 200 per cent.

Of Servia's exports, 40 per cent is for agricultural and horticultural products, 45 per cent for animals and animal products, and the chief remaining class is alimentary products and beverages. There are almost no direct imports into Britain from Servia.

Imports

Servia's imports have about the same value as her exports, and Austria-Hungary provides quite half the total value, Germany over 20 per cent, and the United Kingdom about 10 per cent. The goods imported can only be described as general merchandise. The British returns show that direct exports to Servia fluctuate very much, but they have never been much over £200,000 in any one year. Four-fifths are for cotton goods, and machinery is the only other item which has ever exceeded £10,000 in value.

The following are typical of the duties levied in Servia upon produce and manufactures of the United Kingdom:—

Cotton thread, 2·39*d.* per lb.
Cotton velvets, 7·40*d.* per lb.
Woollen shawls, 10·45*d* per lb.
Steel rails, 7½*d.* per cwt.
Cutlery, mostly 24*s.* 5*d.* per cwt.
Machinery, free.
Tinplates, 2*s.* 0½*d.* per cwt.
Leather belting, 48*s.* 10*d.* per cwt.
Wallpaper, 16*s.* 3*d.* or 24*s.* 5*d.* per cwt.
Varnish (oil), 8*s.* 1½*d.* per cwt.
Paraffin wax, 8*s.* 1½*d.* per cwt.
Coal, free.
Cement, 17*s.* 11*d.* per. cwt.
Copperas, 4*s.* 0¾*d.* per ton.
Beer, in barrels, 4*s.* 0¾*d.* per ton.
Candles, mostly 14*s.* 2¾*d.* per cwt.

Imports from Britain enjoy preferential treaty rates in Servia, and to enjoy this favoured treatment certificates of origin must be produced. Such certificates are issued by Chambers of Commerce and by the police and municipal authorities in the district where the goods have been manufactured or produced.

Local Regulations

There is no commercial travellers' tax or duty on samples if a special certificate in the form annexed to the Austro-Hungarian Treaty is presented. Certificates can be issued by Chambers of Commerce, mayors of towns, or Servian consuls, and they may be either in French or English. The currency unit is the *dinar*, which contains 100 paras, and is equal in value to a franc. (See "France".) The metric system of weights and measures is in use.

Passports in proper form are advisable in order to establish identity and nationality.

British Consulate.—
Belgrade, Vice-Consul.

SIAM

The area of Siam is about 195,000 sq. miles, which is about four times the size of England, and the population is about 6,000,000. Bangkok, the capital, has a population estimated at about 500,000

There are several railways connecting Bangkok with the larger towns, and several new lines are under construction. Bangkok, in which the trade of the country centres, is reached from Singapore (820 miles) in four days by the steamers of the East Asiatic Line, or from Saigon by the steamers of the Messageries Fluviales de Cochin-Chine.

Resources

Agriculture is extending under the encouragement of irrigation schemes. The chief product and article of export is rice, and other agricultural products are pepper, hemp, sesame, tobacco, cotton, coffee, and fruits, but of these only pepper reaches outside markets. The great forest product is teak, and rubber is beginning to figure as an article of export. Fish and cattle are exported. Gold, ruby, and sapphire mines are exploited by British capital. Other minerals, not yet worked, include tin, coal, iron, zinc, manganese, and antimony. Over three-quarters of the entire export value — about £8,000,000 annually —consists of rice, and in Bangkok there are about thirty large rice mills, mostly owned by Chinese houses. Teak represents about one-eighth of the export value, and the trade is in British hands. The next most important items are fish products, hides, and pepper, while subsidiary articles are sticklac and raw silk. Britain used to be paramount in Siamese trade; but Germany and France have improved their positions, although the greater share is still British. Siam's exports from Bangkok are chiefly to Singapore, Hong Kong, and India, and those to Singapore are distributed throughout the markets of the world in proportions of which there are no records. To Britain direct the exports have a value of about £600,000 annually, and a marked feature of the trade is the

great increase in rice, which is now about two-thirds of the total value. Teak and pepper are the only other articles of importance of which direct shipments are made.

Imports

The principal imports of Siam are cotton goods, iron and machinery, gunny bags, sugar, cotton, cotton yarns, hardware and cutlery, kerosene, and opium. The value of imports is about £6,000,000 annually, and the principal sources are Singapore, Hong Kong, Britain, Germany, India, and China. The exports from Britain direct have a value of about £800,000 annually, the principal items being cottons (50 per cent of the total), iron, machinery, wood manufactures, leather goods, biscuits, and woollens.

Local Regulations

Certificates of origin are not required for goods imported into Siam.

The tical or baht is the standard of currency, and its value fluctuates slightly above or below 1*s.* 6*d.*, the maximum during 1909–10 being 1*s.* $6\frac{11}{32}$*d.* and the minimum 1*s.* $5\frac{15}{16}$*d.* The subdivisions of the tical are the satang (copper) = $\frac{1}{100}$ tical; the 5 and 10 satangs (nickel); and the salung (silver) = $\frac{1}{4}$ tical. The former system of coinage ceased to be legal tender on May 16, 1910. A British sovereign is equal to about $13\frac{1}{3}$ ticals. The chief weights and measures of the country are as follows:—1 chang = 2·66 lb. avoird.; 50 changs = 1 hap; 1 niu = 1·66 in.; 12 nius = 1 kup = 20 in.; 2 kups = 1 sok = 40 in.; 2 soks = 1 wah 80 in.; 1 sen (20 wahs) = 44·1 yd.

British subjects are required to register themselves at the British Consulate-General within one month of arrival. For travelling in the interior a passport must be obtained from the Siamese Government. (Registration, 2*s.* 6*d.*; passport, 2*s.*)

British Consulates—

Bangkok, Consul-General, Consul, and Vice-Consuls.
Senggora, Consul.
Chiengmai, Consul and Vice Consul.
Nakawn Lampang, Vice-Consul.

SOUTH AMERICA

(See also the separate countries in their alphabetical order.)

There is a good deal that is common to the ten republics of the South American continent, so that it will be useful to consider them in certain aspects as a whole. British Guiana and the Falkland Islands are considered among the British colonies, and the Dutch and French Guianas under the European countries to which they belong.

The Republics: Area and Population

The republics, with their areas and populations, are:—

	Area, Sq. Miles.	Population.
Venezuela	393,870	2,700,000
Colombia	435,000	4,400,000
Brazil	3,296,880	21,000,000
Ecuador	116,000	1,300,000
Peru	695,700	4,610,000
Bolivia	567,430	2,300,000
Chile	292,580	3,302,000
Argentina	1,135,840	6,800,000
Paraguay	98,000	631,000
Uruguay	72,200	1,040,000

The populations of many of the countries are merely estimated figures, and the areas are usually not exactly ascertained.

The entire area of these ten republics is almost twice as large as that of Europe, and the population is about that of the United Kingdom. The largest state is Brazil, which has an area only one-seventh less than that of Europe, and the smallest is Uruguay, which has about two-thirds the area of the United Kingdom. The races inhabiting these countries are mixed, but here again blood tells. In Argentina the people are nearly all European or of European descent, and Argentina is the most progressive, industrially and commercially, of all the republics, although Brazil has three times the area and over three times the population. In Ecuador and Bolivia, on the other hand, the Indian population averages 56 per cent of the total, and it is well established that, under contact with the white man, the native is subject to a despondency that saps his energies and restricts his increase. It is noteworthy in this connection that, while in many other lands the aborigines have retired at the advance of the white man, the South American has remained and been absorbed.

This fact stands out from any investigation of the external commerce of South America—that Europe has a much larger share of it than the United States, and we shall see to what extent that is so when we glance at the commercial condition in the different republics. The fact seems at first glance surprising. A glance at the ma

will provide a partial solution of the problem. The most westerly point in South America lies due south from the peninsula of Florida. Nearly the entire South American continent lies east of the longitude of the eastern seaboard of the United States and south of the North Atlantic. South America below the equator, and on both its Atlantic and Pacific sides, is nearer to Spain and Portugal than it is to New York. From New York to Pernambuco the distance is 3696 miles; from Plymouth to Pernambuco the distance is only 3867 miles. Practically, therefore, there is equality in the geographical situation of Eastern Europe and the United States in regard to the South American markets, and the superior shipping facilities of Europe convert this equality into a distinct advantage in her favour.

Shipping

South American ports are well served by steamships from Western Europe. The chief lines with regular sailings are as follows:—

Royal Mail Steam Packet Company, every Friday from Southampton and Cherbourg to Pernambuco, Bahia, Rio de Janeiro, Santos, Montevideo, and Buenos Aires.

Pacific Steam Navigation Company, every alternate Thursday from Liverpool to Pernambuco, Bahia, Rio de Janeiro, Santos, Montevideo, Port Stanley (Falkland Islands), Punta Arenas, Coronel, Talcahuano, Valparaiso, and Callao.

Booth Line, twice monthly from Liverpool and Havre to Pará and Manáos.

Houlder Line, every ten days from London to Montevideo, Buenos Aires, and Rosario.

Houston Line, from Liverpool to Montevideo, Buenos Aires, La Plata, and Rosario.

Lamport & Holt Line, fortnightly from Liverpool and London to Bahia, Rio de Janeiro, and Santos; fortnightly from Liverpool to Montevideo and Buenos Aires; and monthly from Liverpool and Havre to ports on west coast of South America.

MacIver Line, fortnightly from Liverpool to Montevideo, Buenos Aires, and Rosario.

Messageries Maritimes, fortnightly from Bordeaux to Pernambuco, Bahia, Rio de Janeiro, Santos, Montevideo, and Buenos Aires.

Norddeutscher Lloyd Company, from Bremen and Antwerp to Montevideo, Buenos Aires, Rio de Janeiro, and Santos.

Royal Holland Lloyd Company, monthly from Amsterdam and Dover to Rio de Janeiro, Santos, and Buenos Aires.

Compagnie de Transports Maritimes, from Marseilles and other Mediterranean ports to Bahia, Dekar, Rio de Janeiro, Santos, Montevideo, Buenos Aires.

Hamburg-American Line, from Hamburg, Antwerp, and Boulogne to Pará, Manáos, Rio de Janeiro, Santos; from Hamburg to Cabedello, Maceio, Desterro, and Rio Grande do Sul; and from Hamburg, Boulogne, and Southampton to Rio de Janeiro, Montevideo, and Buenos Aires.

Chargeurs Réunis, from Havre to Rio de Janeiro, Montevideo, and Buenos Aires.

Demerara and Berbice Steamship Company, monthly from London to Demerara, Berbice, and Surinam.

Ports on the north of South America are best reached by the steamers plying to the West Indies, a few of which go to Guiana and Venezuela, but transhipment may be necessary at Barbados. Many of the ports on the west coast of South America are reached by one of the large transoceanic steamers to Valparaiso, thence by Pacific coast service. The quickest route to the northern parts of the west coast is to Colon or Vera Cruz (see "Central America"), thence across the isthmus, and by coasting steamer south.

Direct steamship service between New York and ports on the east coast of South America south of Venezuela is maintained by the Booth Line (monthly), the Brooks Line, the Houston Line (semi-monthly), the Funch, Edge, & Company Line (also from Baltimore), the Lamport & Holt Line (also from New Orleans), the Northern Line (fortnightly), the Norton Line (fortnightly), the Prince Line (fortnightly), the Red Cross Line (every 10 days), the Sloman Line (fortnightly, also from Baltimore), and the South American Steamship Company. Shipping communication between the United States and Venezuela is provided by the Red D Line, and the Royal Dutch West India Mail Line, all of which call at New York, La Guayra, and Puerto Cabello.

Steamer communication between the United States and Pacific South American ports is given by the Cia. Sud Americana de Vapores (from San Francisco, fortnightly), by Merchant's Line (from New York), by the West Coast Line (from New York), and by the Pacific Steam Navigation Company, (semi-monthly, from San Francisco).

By far the most important point of entrance and exit for the trade of South America is the Rio de la Plata, or the "River Plate", the great estuary that divides the coast of the extensive republic of Argentina from the small republic of Uruguay. It is the broadest river mouth in the world, and contains the great cities of Buenos Aires and Montevideo. Through its channels sail keels carrying nearly half the entire sea-borne trade of the South American continent. The next most important market is Brazil, whose foreign trade enters and leaves by several ports —Rio de Janeiro, Santos, Bahia, Pernambuco, and Pará. The Chile market is the only other of great importance, and its trade focuses in Valparaiso. Callao, the port of Lima, is the avenue for Peruvian oversea trade, the value of which, however, is only

one-fourth that of Chile, and one-twelfth that of the Rio de la Plata. The other markets of South America are of minor importance.

Local Regulations

Different regulations apply to commercial travellers visiting the South American states, and particulars of these regulations and the currency will be found under the respective countries. The metric system of weights and measures (see "France") is the legal standard throughout all the states; but in Brazil the old Portuguese weights and measures still linger in commercial practice, particularly away from the great commercial ports. In the other countries the old Spanish weights and measures, with a few slight variations, are not yet quite obsolete. But the use of these old standards is dying, and their precise equivalents are of no importance in either the export or the import trade.

SPAIN

Spain has an area of 194,740 sq. miles, so that it is almost four times as large as England. Its population, including some outlying parts, is about 20,000,000. The capital, Madrid (547,000), is only to a limited extent a commercial centre. The chief ports are Cadiz (70,000), Barcelona (550,000), Valencia (220,000), Cartagena (100,000), Malaga (135,000), Almeria (50,000), Gijon (50,000), Santander (55,000), Bilbao (85,000), Alicante (52,000), and Corunna (45,000). These ports are the chief trade centres.

Shipping and Railways

The quickest route from Britain to Spain is via Paris and thence by the "Sud Express". There are direct steamer services from Liverpool to Corunna by the Pacific Steam Navigation Company; from Southampton to Corunna by the Royal Mail Steam Packet Company. There are also sailings to Gibraltar from London and Liverpool. The Serra and Tintore Lines sail from Liverpool weekly and call at the principal ports of Portugal and Spain, and Hall's Line gives a weekly service from London to Cadiz and Malaga. The direct steamship services between the United States and Spanish ports are those of the Campania-Transatlantica sailing between New York and Cadiz, Barcelona and Genoa, and those of the Pinillos-Saenz Line, which gives monthly sailings between Barcelona and New Orleans, Savannah, or New York.

Spain has over 9000 miles of railway, all privately owned, but in spite of this the means of communication and transit are quite inadequate to the needs of the country. The royal roads alone are good. The rivers are numerous, but generally unsuitable for navigation.

Resources

The resources of Spain are vast and valuable, but industrial enterprise is tardy in attempting their development upon an adequate scale. Instead of utilizing her raw materials to provide employment for her people and return for capital, the best raw material finds a foreign market as such, and the Spaniard is deprived of the natural advantage due to him. Attention, absorbed for so many years by the distractions of her far-scattered colonies, is now being directed introspectively, and the social and economic needs are becoming realized. But the process of their attainment is slow, and political unrest brakes the wheels that would carry the country forward. The first needs are better communications—roads and railways—a purer public service, and liberty of press and speech. Then would follow stability of national credit, confidence in public order, and willingness to embark capital in the utilization of the available domestic labour in industrial enterprises suited to the needs and the resources of the country

Four-fifths of the area of Spain is productive, and of this proportion one-third is devoted to agriculture and horticulture, 20 per cent to fruits, 20 per cent to grass, 3½ per cent to vineyards, and 1½ per cent to olive culture. More than half the cereal-crop acreage is under wheat, and the other cereal crops are barley, rye, maize, oats, and rice. Important fibre crops are esparto, flax, and hemp. The importance of the vineyards may be estimated by the size of the wine production, about 400,000,000 gallons annually, and the olive oil expressed is about one-tenth the measure of the wine. Silk culture is prosecuted in the southern provinces. The principal fruits that find outlet in the export market are oranges and nuts. The wine production absorbs most of the grape harvest, but considerable quantities of grapes are exported dried. Orchard produce includes apples, pears, cherries, plums, peaches, apricots, almonds, dates, figs, citrons, pomegranates, and, in the extreme south, pineapples and bananas, saffron, liquorice, and barilla are other vegetable produce. The stock animals number about 20,000,000, over

65 per cent of the number being sheep, one-eighth of the total goats, almost one-eighth cattle, one-tenth pigs, and the remainder mules, asses, and horses. Bulls are bred and reared to provide the demands of the bull ring. The fisheries of Spain have their sea harvests of sardines, tunny, and cod. They give employment to about 70,000 fishermen, and the 400 factories that prepare and tin sardines employ over 16,000 hands.

The country has many valuable mineral deposits, some of great extent and of exceptional richness. They give employment to more than 100,000 hands, and the annual output is worth about £10,000,000. The highest value is usually obtained from the copper ores, the output being worth about £3,000,000 annually, although the value of iron ore follows copper very closely. The iron ore of northern Spain is a valuable raw material for British steel producers by the Bessemer process. The value of coal is a little behind that of iron, and argentiferous lead ore has about the same value as coal. These four minerals divide between them 85 per cent of the mineral output The others are lead ore, zinc ore, quicksilver ore, and salt. Cobalt, sulphur, and phosphorus are found, and attempts are being made to operate upon some beds of petroleum shale.

Spain has a fair textile manufacturing industry —cottons and woollens—but the silk industry is practically confined to the production of the raw silk for French looms. There are about 150 paper mills and over thirty glass works, several cork-working establishments, seventy sugar factories (principally using beets, but many using sugar cane); otherwise the industries are small, and their output for domestic consumption. The most promising channel for manufacturing enterprise lies in the field of iron and metals. Spain raises from her mineral deposits more iron ore than France, three times as much as Austria-Hungary, and more than half as much as the United Kingdom; but no serious attempts have been made to work the valuable raw material that is exported in so great quantity.

Exports

The exports of Spain approach £40,000,000 in annual value, and the United Kingdom is the most important customer, taking about one-third of the total value. France takes about one-fifth, and the next best is Cuba, with about one-fifteenth. Mineral ores are the most important department in the export list, and account for over one-eighth of the total value, iron ore being almost three times as high in aggregate value as copper ore. In spite of her great mineral wealth, and the opportunity to export her minerals in the form of manufactured goods, Spain exports iron and steel only to the value of about £200,000, while ores and raw metals come to over £10,000,000 annually, showing how Spain refrains from using adequately her great natural resources. Lead in plates and bars claims almost £3,000,000, and copper regulus about £1,500,000. The next great article of export is wine, worth over £2,000,000 annually, followed by fruit (oranges, almonds, raisins, grapes, and Spanish nuts), totalling almost £3,500,000. Cork and cork manufactures each have almost £2,000,000, and other important articles are esparto grass, hides and skins, olive oil, paper, raw wool, quicksilver, and salt. The list shows few fully manufactured articles, and is significant of the backwardness of manufacturing industries in Spain.

British imports from Spain have a value of about £16,000,000, which is in excess of the proportion mentioned above, due to some goods of transhipment entering into the British returns. Metals and ores account for over £10,000,000, more than half of the value being for iron ore, one-fifth for lead ore and lead, and almost one-fifth for copper, principally in the form of regulus. Quicksilver and silver ore are the only other values of moderate importance. In the department of fruit Britain draws from Spain about £3,000,000 value annually, three-fifths of this being for oranges, and the other chief items being grapes, almonds and other nuts, and lemons. Vegetables claim about £700,000, five-sixths of it being for onions, and the remainder for tomatoes and potatoes. Wine is about £500,000, esparto grass about £200,000, and cork about £250,000. There are no other items of great importance, but of comparative importance are barley, cotton manufactures, dyestuffs, oilcake, resin, sheepskins, pit props, and manufactures of wood.

Imports

The imports of Spain are about £40,000,000 annually, and Britain, supplying one-sixth of the total value, is the principal source. France and the United States follow close behind, and the other chief contributors are Germany, Russia, Portugal, British East Indies, Argentina, and Belgium. The chief articles of import are raw cotton, with about £5,000,000, and cotton yarn and manufactures, with a value of only about one-tenth as much. Wheat is important, and fluctuates from £1,500,000 to £4,000,000, according to the domestic supply. Other articles usually in excess of £1,000,000 are animals, chemical products, coal, salted fish, coffee, hides and skins, iron and steel manufactures, machinery, and timber.

The exports of British produce and manufactures to Spain, which have an annual value of about £5,000,000, are varied in nature. Coal, about £1,500,000, is the only article of outstanding prominence, and among other articles are manure, machinery, iron and steel goods, ships and boats, and wool.

Customs Duties

The following Spanish import duties upon British goods may be taken as typical of the incidence of the customs tariff of Spain:—

Sewing thread, cotton, 8·71*d* to 10·89*d*. per lb.
Velvets and plushes, mixed, 5*s*. 5½*d*. per lb.
Woollen shawls, 3*s*. 7½*d*. per lb.
Steel rails, 1*s*. 8½*d*. to 2*s* 3½*d*. per cwt.
Cutlery, table and pocket, 81*s*. 3*d*. per cwt.
Machinery, steam engines, from 8*s*. 1½*d*. to 14*s*. 3*d*. per cwt.
Tinplates, 5*s*. 8½*d*. per cwt.
Leather belting, 8·71*d*. per lb.
Rubber shoes, 1*s*. 1*d*. per lb.
Wallpaper, from 12*s*. 2½*d*. to 61*s*. per cwt.
Oil varnish, 12*s*. 2½*d*. per cwt.
Paraffin wax, 12*s*. 2½*d*. per cwt.
Coal, 2*s*. 10½*d*. per ton.
Cement, 4*s*. 0¾*d*. per ton.
Copperas, 9¾*d*. per ton.
Beer, 5½*d*. per gallon.
Herrings, salted or smoked, 4*s*. 10½*d*. per cwt.
Candles, paraffin, 20*s*. 4*d*. per cwt.

To obtain the benefit of the treaty tariff, goods should be accompanied by certificates of origin, which, in Britain, may be issued by Chambers of Commerce, mayors, magistrates, customs officers, and justices of the peace. They should be in Spanish or French; when they are in another language they must be translated. All certificates of origin are liable to a stamp duty of two pesetas. In Spanish West Africa the bill of lading is sufficient document for customs purposes except in the case of wine.

Local Regulations

The commercial traveller visiting Spain need pay no tax if he carry a certificate of identity in prescribed form issued by Chambers of Commerce and bearing the seal of the Board of Trade. Commercial travellers may in no case either sell the samples they bring with them, or take orders on the samples from private individuals. They may only take orders from commercial houses already established in Spain which have paid the necessary taxes entitling them to carry on business. In order to sell samples, or take orders for private individuals, travellers must pay the tax of 1500 pesetas (£56) imposed on sellers of articles of novelty of all kinds who keep no open establishment entitling them to receive orders. Dutiable samples are exempt from duty if a guarantee be given for their re-exportation.

The currency unit of Spain is the peseta, which contains 100 centesemos, and is nominally of the same value as a franc, but is actually worth only 7½*d*. The metric system of weights and measures is used (see "France").

It is most advisable for travellers to be provided with passports. The *visa* of a Spanish consul is not necessary, but will be found useful in travelling in provincial towns and country districts.

In the province of Barcelona British subjects should, upon arrival, personally show their passports to His Majesty's Consul, who will thereupon furnish them with a certificate, which they are required to present, within twenty-four hours after their arrival in Barcelona, at the office of the Civil Governor (in country towns and villages at the office of the mayor) in order that their names, description, &c., may be registered. A fine, and possibly expulsion, may result from non-compliance with this regulation.

Ceuta.—British subjects desiring to visit Ceuta should apply through the British Vice-Consul at Algeciras for an order from the Commander-General.

British Consulates.—
Madrid, Consul.
Barcelona, Consul-General and Vice-Consuls.
Alicante, Vice-Consul.
Burriana and Castellon, Consul.
Denia, Vice-Consul.
Gandia, Vice-Consul.
Iviza, Vice-Consul.
Palamos, Vice-Consul.
Palma, Vice-Consul.
Port Mahon, Vice-Consul.
San Feliu de Guixols, Vice-Consul.
Saragossa, Vice-Consul.
Tarragona, Vice-Consul.
Torrevieja, Vice-Consul.
Valencia, Consul.
Bilbao, Consul and Vice-Consul.
Castro Urdiales, Vice-Consul.
San Sebastian, Vice-Consul.
Santander, Vice-Consul.
Corunna, Consul and Vice-Consul.
Carril and Villagarcia, Vice-Consul.
Corcubion, Vice-Consul.
Ferrol, Vice-Consul.
Gigon, Vice-Consul.
Rivadasella, Vice-Consul.
Vigo, Vice-Consul.

Malaga, Consul and Vice-Consul.
Adra, Consular Agent.
Aguilas, Vice-Consul.
Almeria, Vice-Consul.
Cartagena, Vice-Consul.
Garrucha, Vice-Consul.
Granada, Vice-Consul.
Linares, Vice-Consul.
Marbella, Vice-Consul.
Mazarron, Consular Agent.
Porman, Consular Agent.
Seville, Consul and Vice-Consul.
Algeciras, Vice-Consul.
Cadiz, Vice-Consul.
Cordoba, Vice-Consul.
Huelva, Vice-Consul.
Jerez, Vice-Consul.
Port St. Mary, Vice-Consul.
San Lucar, Vice-Consul.
San Roque, Vice-Consul.

Canary Islands

The Canaries, which are treated as part of Spain and not as colonies, have an area of 2807 sq. miles and a population of 360,000. The principal ports are Santa Cruz (39,000) in Teneriffe, and Las Palmas (45,000) in Grand Canary. These ports are visited by the Union-Castle steamers, sailing from London to South Africa; by the Woermann Line from Hamburg; and by Yeoward Brothers' Line from Liverpool and Lisbon; also by Spanish and Portuguese steamers. The chief products are grapes, sugar cane, wheat, maize, tobacco, fruits, vegetables, cochineal, and petroleum. The fisheries around the islands are valuable. Lace and embroideries are important home industries. The exports and imports are included in the figures relating to Spain, there being no special figures for the islands. Britain imports from the Canaries goods to the value of about £1,500,000 yearly, more than half of the value being for bananas and one-third for tomatoes, one-eighth for potatoes, with cochineal, embroidery, and almonds as minor imports The imports from Britain have a value of about £1,000,000 annually, chiefly for coal, corn, cotton goods, manure, soap, candles, woollens, machinery, and biscuits and cakes.

British Consulates.—
Teneriffe, Consul.
Santa Cruz, Vice-Consul.
La Palma, Vice-Consul.
Orotava, Vice-Consul.
Las Palmas and Puerto de la Luz, Vice-Consul.

Spanish Africa

The possessions of Spain in Africa—Rio-de-Oro and Adrar on the coast south of Morocco, Rio Muni and Cape San Juan on the Guinea Coast, and the islands of Fernando Po, Annabon, Corisco, Great Elobey and Little Elobey in the Gulf of Guinea—have a total area of 80,000 sq. miles and a population of 300,000. The islands export a little rubber and palm oil, but the other colonies have little or no commercial value. There are no trade figures relating to these possessions, but Britain sends goods to the value of about £20,000 every year, mostly cottons and iron goods.

British Consulate.—
West African Possessions, Consul, The Provincial Commissioner, Eastern Province of Southern Nigeria.

SWEDEN

Sweden has an area of 172,870 sq. miles, including lakes, so that it is about 40 per cent larger than the United Kingdom. The population is about 5½ millions. The capital and chief city is Stockholm, with a population of 340,000. The other chief towns are Gothenburg (163,000) and Malmö (82,000). No other town exceeds 50,000. These three are also the chief ports, Gothenburg having the largest trade.

Shipping and Railways

The quickest route from Britain to Sweden is overland to Copenhagen (see "Denmark"), thence by steamer to Stockholm. There is direct steamship service from Hull and London to Stockholm by the Wilson Line, also to Gothenburg from Hull and Grimsby by the Wilson Line, and from London and Granton by the Thule Steamship Company. There is no regular direct service between Swedish ports and the United States. Goods are transhipped at British, German, or Baltic ports. There is a good coasting service between Swedish ports.

There are over 8000 miles of railway in the country, about one-third being state-owned.

Resources

Agriculture is a subsidiary industry, only about 9 per cent of the total area of the country being under cultivation, and 3½ per cent under meadow

grass. The annual value of all cereal crops is about £17,000,000. Wheat is a suitable crop only for the south, and the principal crop is oats, which accounts for almost half the corn crop acreage and more than half the produce. It is the only cereal crop exported in any except minute quantities. After oats in importance come rye, barley, and mixed corn, then wheat, and finally small quantities of peas and beans. The non-cereal crops are potatoes, turnips, and sugar-beets, vetches, flax, hemp, and tobacco The stock animals number about 5,500,000, almost half being cattle, about one-fifth sheep, one-seventh pigs, one-tenth horses, and a few goats. Sheep and goats are decreasing; pigs and horses show steady increase. Butter is of importance in the export trade. The forests of Sweden, especially in the south, are of great value and extent, and provide almost half the entire value of the country's exports. The chief timbers are oak and beech. The timber and timber-working industries provide employment for about 70,000 people, half the total number being engaged in sawmills and planing-mills. The fishing industry is small, although it used to be important. Salmon and salmon trout are plentiful in the inland waters.

The iron deposits of Sweden are important, and Swedish iron has a name without a rival for the production of steel. Coal is plentiful but of poor quality, and is little worked, the output fluctuating at about 300,000 tons annually, which is only 6 per cent of the tonnage of iron ore mined. The other minerals worked to a small extent are zinc, iron pyrites, copper, lead and silver, manganese and alum. The output of iron ore and pyrites is steadily rising; coal is stationary, copper fluctuates, but is on the whole increasing; zinc has a diminishing tendency; silver and lead and manganese have decreased almost to the point of extinction, alum was never large, but is only one-sixth of its high-water mark of output; and cobalt and nickel have almost disappeared.

The timber and woodworking industries include joinery and furniture making, and paper and pasteboard mills. As employers of labour the machinery and iron and steel smelting and working come next, and employ 45,000 workpeople in the aggregate. The other industries include match factories, sugar works, flour mills, tobacco factories, breweries, textile mills and factories (cotton and wool), glass works, brandy distilleries, and margarine factories.

Exports

The exports of Sweden have an annual value of about £30,000,000, and Britain is by far the most important purchaser, taking quite one-third of the total value. Germany is second with about one-fifth, and the next most important customers are Denmark, France, Norway, Holland, Russia (with Finland), and Belgium. Of the total value exported, wood constitutes quite one-third, and wood pulp almost 10 per cent. The other great important group is iron and steel, which amounts to about 20 per cent of the total; bar and hoop iron is the highest item in value, and iron ore is almost equal to it. The other important exports are butter, paper, machinery, matches, fish, zinc blende, glassware, horses, and cattle. Of Britain's share of Sweden's exports—usually in excess of £10,000,000 annually—wood is supreme in importance with an annual value of £3,000,000 to £4,000,000, chiefly for dressed fir. Metal ores and semi-manufactured metals (copper and iron) account for £1,500,000. Paper pulp is worth another £1,500,000, paper £1,000,000, and butter approaches £2,000,000. These articles constitute over 85 per cent of the total reaching Britain. The other articles of importance are matches, machinery, electrical goods, eggs, glass bottles and flint glass, raw hides, bacon, and hewn stones.

Imports

Sweden's imports approach £40,000,000 annually. Over one-third of the value goes from Germany, the chief contributor, Britain being second with over 25 per cent of the total. The other chief contributors are the United States, Denmark, Norway, Russia, and France. Coal is the principal item, and accounts for about 10 per cent of the total value. The other chief articles are coffee, machinery, iron and steel goods, wheat, raw cotton, raw wool, skins, mineral oil, fish, woollen cloth and yarns, non-mineral oils, cotton piece goods and yarns, bacon and hams, silk piece goods, paper, and apparel. Of Britain's exports to Sweden, one-third of the total consists of coal, and nothing else approaches it in importance. The other important items are iron, cottons, machinery, wool, ships, bran and pollard, woollens, chemicals, tin, copper, oilcloth, jute fabrics, molasses, leather, hardware, rubber goods, linen goods, empty bags, fish, hats, oils, manure, brass goods, and spirits.

The following are typical of the import duties in Sweden upon produce and manufactures of Britain:—

Sewing thread, 2·42*d.* per lb.
Cotton lace, 2*s.* 0½*d.* per lb.
Woollen shawls, 10·59*d.* per lb.
Steel rails, free.
Cutlery, common, 28*s.* 3*d.* per cwt.

Machinery, mostly 10 per cent *ad valorem*.
Tinplates, free.
Leather belting, 10 per cent *ad valorem*.
Rubber shoes, 7¾*d*. per lb
Wallpaper, 11s 1*d*. per cwt.
Oil varnish, 10s. 11*d*. per cwt.
Paraffin wax, 8s. 6*d* per cwt.
Coal, free.
Cement, 6s. 9½*d*. per ton.
Copperas, 10 per cent *ad valorem*.
Beer, in casks, 1s. 6½*d*. per cwt.
Herrings, salted or preserved, free.
Candles, 6s. 9½*d*. per cwt.

Certificates of origin are required in Sweden only for certain specific articles, which include horseflesh, wool, hair, rugs, shoddy, horns, hoofs, undressed hides and skins, uncooked crayfish, and sugar. Certificates, when necessary, must be issued by the Swedish consul or other public authority at the port of export.

Local Regulations

A commercial traveller's licence costs £5, 11s. (100 kroner) for thirty days, and £2, 15s. 6*d*. (50 kroner) for each fifteen days thereafter. Duty must be paid on samples of value, but can be recovered in case of exportation. Resident agents who are not Swedes must pay the taxes mentioned above, as well as visiting commercial travellers.

The monetary system is the same as that of Denmark (see "Denmark") and the metric system of weights and measures is used (see "France").

British Consulates —
Stockholm, Consul and Vice-Consuls.
Borgholm, Consular Agent.
Gefle, Vice-Consul.
Gotland (Wisby), Vice-Consul.
Hernosand, Vice-Consul.
Hudiksvall, Vice-Consul.
Kalmar, Vice-Consul.
Luleå, Vice-Consul.
Norrköping, Vice-Consul.
Nykoping, Vice-Consul.
Oland, Vice-Consul.
Orusköldsvik, Vice-Consul
Oskarshamn, Vice-Consul.
Skellefteå, Vice-Consul.
Soderhamn, Vice-Consul.
Sundsvall, Vice-Consul.
Umeå, Vice-Consul.
Westervik, Vice-Consul.
Gothenburg, Consul and Vice-Consul.
Carlscrona, Vice-Consul.
Halmstad, Vice-Consul.
Helsingborg, Vice-Consul.
Landscrona, Vice-Consul.
Malmo, Vice-Consul.
Marstrand, Vice-Consul.
Stromstad, Vice-Consul.
Uddevalla, Vice-Consul.
Warberg, Vice-Consul.
Ystad and Ahus, Vice-Consul.

SWITZERLAND

Switzerland has an area of 15,976 sq. miles, so that it is just about twice as large as Wales. The population is about 3½ millions. Berne, the capital, has a population of 80,000. The larger towns and commercial centres are: Zürich, 184,000; Bâle or Basel, 130,000; and Geneva, 121,000.

Switzerland is reached from Britain via Paris, the route thence depending upon the point of destination. The railways of Switzerland have a length of about 3200 miles, of which 1525 miles are state-owned. Communication is good and transport cheap both on the railways and on the lakes.

Resources

Almost 30 per cent of the area of Switzerland is unproductive. But the unproductive land is chiefly mountain, constituting a most important commercial asset, as it draws to Switzerland the tourists whose accommodation and catering forms the chief industry of the country. Of the productive land, about 30 per cent is forest. Pasture land comprises about one-half of the remainder, and sustains the herds of cattle which are the basis of the cheese and condensed-milk manufacture, the most important agricultural industry of the country. Under the diligent attention of its peasant proprietors the land is made to yield its utmost. The principal agricultural crops are wheat, rye, oats, and potatoes, but the domestic demand is supplied in great part by importation. Fruit is grown, and wine, mostly rather inferior in quality, is expressed. The cattle of Switzerland number over 2,000,000, almost half the total stock, the remainder being pigs, goats, sheep, and horses, in the order of numerical importance. Fish abound in the rivers and lakes. The minerals are coal, iron, salt, alabaster, marble, and asphalt. Salt, iron, and coal are exploited, and the cement industry is important.

The number of people engaged in manufacturing industry is not far short of those engaged in

agricultural pursuits. The chief manufactures are cotton, silk, embroidery, watches and jewellery, machinery, including electrical machinery, and iron, chocolate, and tobacco. The same skill and intensity of purpose that make a success of agriculture in a country not particularly favoured by natural advantages place the manufactured products upon a high pinnacle of quality.

Exports

The exports of Switzerland amount to about £45,000,000 annually, the chief market being Germany, where 25 per cent of the total value finds its consumption. The next most important customers are the United Kingdom, the United States, France, Italy, Austria, and Russia. Silks are the most important export, with a total value of more than £10,000,000, chiefly manufactures, but largely raw silk. Cottons, chiefly ribbons, embroidery, and lace, amount to over £8,000,000, woollens, chiefly yarns, to about £1,000,000, watches and clocks claim £6,000,000 of the total; machinery and locomotives about £3,000,000; cheese, £2,000,000; condensed milk over £1,000,000. These articles account for three-fourths of the total, and no other reaches £1,000,000; but the principal other goods are chemical products, coal-tar dyes, raw hides and skins, iron manufactures, leather and its manufactures, and ready-made clothing.

Consignments of goods from Switzerland to Britain have a value of about £7,000,000 annually, but of this value about one-fifth is re-exported and not consumed in the country. Silks are the most important group of these exports to Britain, the value of the group being about £3,000,000 annually, principally for broadstuffs and ribbons. Embroidery and needlework are responsible for £2,000,000, and the other important items are watches, condensed milk, cocoa and chocolate, cotton piece goods and hosiery, motor cars, straw plaiting, woollen stuffs and hosiery, machinery, boots and shoes.

Imports

The imports of Switzerland have a value of about £65,000,000 annually. The chief contributor is Germany, supplying about one-third of the total, and the next most important sources are France, Italy, America, Austria, and Britain. The chief articles of import are silk, principally raw, about £8,000,000; cotton, about half manufactured and half raw and yarn, £4,000,000; wool and woollens about £3,000,000; coal and coke, wheat, clothing, machinery, iron and steel, wrought iron and steel, chemical products, fruit and vegetables, oats, leather, and wood. These articles account for half the total, and the chief of the less-important items are coffee, dyestuffs, eggs, flour, manufactures of flax, hemp, and jute, maize, pig iron, malt, mineral oils, sugar, and wine. According to British returns, consignments of British produce and manufactures to Switzerland have a value of about £3,000,000 annually, half of the value being for cottons, chiefly for unbleached piece goods and cotton yarns. The other items of importance are woollens, machinery, iron and steel and their manufactures, apparel, chemicals, leather, linen goods, and rubber goods.

Customs Duties

The following are typical of the duties upon Switzerland's imports from Britain:—

Sewing thread—cotton—for retail sale, 2·18*d.* per lb.
Cotton velvet, 0·14*d.* per lb
Woollen shawls, 4·35*d.* per lb.
Steel rails, 1½*d.* to 1*s.* 2½*d.* per cwt.
Cutlery, 20*s.* 4*d.* per cwt.
Machinery, steam engines, from 2*s.* 0½*d.* to 6*s.* 6*d.* per cwt.
Tinplates, 9¾*d.* per cwt
Leather belting, 14*s.* 2½*d.* per cwt.
Wallpaper, 4*s.* 10½*d.* per cwt.
Lac varnishes, 8*s.* 11½*d.* per cwt.
Paraffin wax, 2½*d.* per cwt.
Coal, free.
Cement, 8*s.* 1½*d.* per ton.
Copperas, 2*s.* 5*d.* per ton.
Beer, in casks, 1*s.* 7½*d.* or 2*s* 0½*d.* per cwt.
Herrings, salted or smoked, 4·88*d.* per cwt.
Candles, ordinary, 6*s.* 6*d.* per cwt.

The only merchandise requiring a certificate of origin when entering Switzerland consists of certain Spanish and Italian wines.

Local Regulations

For commercial travellers visiting Switzerland a licence is necessary. It is free to travellers calling only on traders, and costs £4 for six months, or £6 for one year to travellers calling upon private individuals. To procure the licence a certificate of identity issued by a British Chamber of Commerce must be shown. Samples are allowed to enter under bond on guarantee respecting payment of duty in case of non-exportation. The agreement between Britain and Switzerland regarding the samples accompanying commercial travellers has served as the model for agreements between Britain and some other European Governments, and its express wording may be

given. "The marks, stamps, or seals affixed by the Customs Authorities of one country to commercial travellers' samples at the time of exportation, and the list of such samples drawn up in proper form and certified by the competent authority, such list containing an exact description of the samples, shall form sufficient evidence, so far as the respective Customs Authorities are concerned, of their nature, and shall entitle them to exemption from all customs examination except in so far as may be necessary to establish that the samples produced are identical with those enumerated in the list."

Switzerland is a member of the Latin Monetary Union, so that her currency is the same as the French; the centime is called also a *rappen*. The metric system of weights and measures is used (see "France").

A passport is necessary in order to obtain a "Permis de Séjour", which must be taken out after their arrival, by persons intending to reside in Switzerland. Children sent to schools in Switzerland should carry passports.

British Consulates.—

Berne, Consul.
Neuchatel, Vice-Consul
Geneva, Consul and Vice-Consul.
Lausanne, Consul.
Montreux, Vice-Consul.
Zurich, Consul-General and Vice-Consul.
Bâle, Vice-Consul.
Davos, Consul.
Lucerne, Consul.
Lugano, Vice-Consul.
St. Gall, Vice-Consul.
St. Moritz, Consul.

TURKEY

The aggregate area of the Ottoman Empire in Europe, Asia, and Africa is about 1,605,000 sq. miles, with a population of about 36,000,000, but this includes several states that are tributary only nominally, and are in fact independent or in possession of some other power. Thus Turkey has scarcely a shadow of authority in Egypt and Cyprus, and we have considered the former country as an independent entity and the latter as a British Colony. Then Crete and Samos are tributary to Turkey, but the bond is so loose that they are properly subjects for independent consideration.

The capital of Turkey is Constantinople (1,125,000), and the other principal towns are Smyrna (200,000), Salonika (150,000), Adrianople (70,000), Damascus (250,000), Aleppo (200,000), Beirut (120,000), Bagdad (145,000), Mecca (60,000), and Medina (50,000). The chief ports are Constantinople, Salonika, and Smyrna.

Shipping and Railways

The quickest route from Britain to Constantinople is by Paris, thence by the "Orient Express", the journey taking about seventy hours from London. An alternative route is by Ostend and Brussels by the Ostend-Vienna Express. The Moss Line of steamers provides a regular service from Liverpool to Smyrna and Constantinople, and the Papayanni and Ellerman Lines sail between Liverpool and Smyrna. The only direct line from the United States to Turkish ports is the Deutsche Levant Line, which connects Constantinople and New York. Goods are generally transhipped via Liverpool.

In European Turkey there are over 1200 miles of railway, and in Asia Minor and the rest of Asiatic Turkey there are almost 3000 miles, the longest being that from Damascus to Mecca.

Resources

Turkey is, on the whole, fertile, but suffers from lack of water. Irrigation is doing something to transform desert land into productive soil. But production is restrained by the tithes levied on the produce and by internal customs duties on produce passing from one province to another, so that farmers grow little except what they require for their own use The chief agricultural products are cotton, coffee, tobacco, opium, madder, cereals, figs, nuts, almonds, grapes, and olives. The chief cereals are wheat, rye, barley, oats, and maize. The mountains are rich in minerals, but the exploitation of the known deposits is by no means extensive and the mining practice is crude In European Turkey there are deposits of copper, alum, salt, iron, calamine, silver, gold, and manganese. In Asia Minor are deposits of meerschaum, copper, lead, coal, antimony, salt, emery, alum, nitre, and iron. The royalties upon exported minerals—ranging from 5 to 15 per cent—prevent more extended development. Tobacco and salt are Government monopolies. The fisheries of the Bosphorus are valuable, and the sponge of the Turkish Mediterranean is the finest in the world.

The manufactures of Turkey that find an export market—chiefly hand-made textiles—have suffered from the factory products of the West. There still exist, however, many thousands of these hand

weavers, and there are some power factories in Constantinople and Salonika. There are a few paper mills and glass factories.

Exports

The value of Turkey's exports is about £16,000,000 annually, and of this value Britain buys about one-third. France is the next-best customer with 25 per cent of the total. Then come Austria, Germany, Italy, Bulgaria, Russia, and Holland. The principal articles of export are cocoon and raw silk, mohair, figs, coffee, barley, opium, valonia, ores, carpets, cotton, olive oil, and eggs. In considering Britain's imports from Turkey we are able to differentiate between European and Asiatic Turkey, and it may serve a purpose to do so

The exports of European Turkey to Britain are worth about £1,500,000 annually, and of this value one half is for mohair or angora goat's hair, so important for our woollen manufactures, the rest being cereals (chiefly barley), opium, woollen goods (carpets, rugs, and tapestries), tobacco, silk, skins, and seeds.

Britain's imports from Asiatic Turkey have an annual value of about £4,500,000, and cereals are the most important group in this value. The barley sometimes exceeds £1,000,000 annually The only other article whose value exceeds £500,000 annually is raisins, and articles of less importance are sheep's wool, figs, oranges, valonia (a dyeing substance), olive oil, tobacco, carpets and rugs, dried fruit, opium, leather, gums, sponge, copper, cotton seed, dari seed, stones, nuts, galls, liquorice, and sheepskins.

Imports

Turkey's imports approach a value of over £25,000,000 annually, and of the total quantity Britain provides over 30 per cent. Of the imports the class of outstanding prominence is that of cotton manufactures. Then come, in order of importance, sugar, cloth, grain and flour, thread, woollens, rice, petroleum, and coffee. In comparing the list of imports with the list of exports it will be noticed that coffee and grain and flour appear in both. If these articles are taken from a foreign port, such as Aden, to Smyrna or other port of Turkey they figure as exports and imports, although their source may have been Turkish territory. This causes the figures of trade to be slightly exaggerated, and the fact should not be overlooked. Austria provides little more than half as much of Turkey's imports as Britain, and the next most important countries—France, Italy, Russia, Germany—supply still less.

British exports to European Turkey are considered apart from those to Asiatic Turkey. Britain's exports to Turkey in Europe have an annual value of about £3,000,000, of which one-half is for cotton piece goods, and one-fifteenth for cotton yarn. The other important articles are woollen piece goods, coal, machinery, iron, jute manufactures, ships (usually), oilcloth, copper, chemicals, tin, empty sacks, apparel, hardware, rubber goods, biscuits and cakes, seed oil, and leather

British exports to Asiatic Turkey exceed £4,000,000 annually and three-quarters of the value is for cottons, mostly piece goods, and about £250,000 is for woollens, again mostly piece goods. The other important items are coal, iron, machinery, tin, chemicals, copper, hardware, empty bags, fish, and jute manufactures.

There is a British Chamber of Commerce for Turkey in Constantinople, with branches at Smyrna and Salonika.

The general rate of import duty upon goods entering Turkey is 11 per cent *ad valorem*, but most agricultural machinery is exempt from duty.

There is a general export duty of 1 per cent of value. No certificates of origin are required for goods imported into Turkey.

Local Regulations

There are no taxes or regulations affecting commercial travellers as such, but passports are necessary for all foreigners. Travellers' samples must pay the 11-per-cent *ad valorem* duty upon entry, but 10 per cent is refunded upon re-exportation, the remaining 1 per cent being retained as a transit duty. Exportation must take place within six months, and the refund is made at the custom house through which the goods leave Turkey. Samples of no value or of which no use can be made are exempt from duty.

The standard of currency is the Turkish *lira*, or gold *medjidie*, which is worth 18*s.* 0·064*d.*, and contains 100 *piastres* (1 piastre = 2·16*d.*) The chief weights and measures in use are as follows: 1 oke = 2·8326 lb. avoir.; 44 okes = 1 cantar or kintal = 125 lb. avoir.; 1 kilch = 0·9120 imp. bus.; 1 almud = 1·151 imp. gal.; 1 endazé (of cloth) = 27 in. Technically the metric system is obligatory, but the decree that expressed the enactment has never been put into force.

Persons travelling to Turkey must be provided with a passport bearing the *visa* of a Turkish consular officer. Without such passport they will be refused admission to the country. A fresh *visa* must be obtained for each journey. British subjects desiring afterwards to travel within Turkey

must obtain a permit through a British Consul. On leaving Turkey the *visa* of a British Consul should be obtained.

British Consulates —

Constantinople, Commercial Attaché, Consul-General, Consul, and Vice-Consul.
Adana, Vice-Consul.
Brussa, Vice-Consul.
Dardanelles, Vice-Consul.
Dede-Agatch, Vice-Consul.
Gallipoli, Vice-Consul
Ismidt, Vice Consul.
Mersina, Vice-Consul.
Panderma, Vice-Consul.
Rodosto, Vice-Consul.
Adrianople, Consul.
Aleppo, Consul.
Alexandretta, Vice-Consul.
Bagdad, Consul-General.
Karbala and Nejaf, Vice-Consul.
Mosul, Vice-Consul.
Basrah, Consul.
Beirout, Consul-General and Vice-Consul.
Haifa, Vice-Consul.
Latakia, Vice-Consul.
Safed, Vice-Consul.
Sidon, Vice-Consul.
Bengazi, Consul.
Damascus, Consul.
Erzeroum, Consul.
Diarbekir, Vice-Consul.
Bitlis, Vice-Consul.
Van, Vice-Consul.
Jeddah, Consul and Vice-Consul.
Hodeidah, Vice-Consul.
Jerusalem, Consul.
Gaza, Consular Agent.
Jaffa, Vice-Consul.
Salonika, Consul-General and Vice-Consul.
Cavalla, Vice-Consul.
Janina, Vice-Consul.
Monastir, Vice-Consul.
Prevesa, Consular-Agent.
Scutari, Vice-Consul.
Uskub, Vice-Consul.
Smyrna, Consul-General and Vice-Consul.
Adalia, Vice-Consul.
Aidin, Vice-Consul.
Aivali and Pergamos, Vice-Consul.
Mitylene, Vice-Consul.
Rhodes, Vice-Consul.
Samos, Vice-Consul.
Scala Nuova, Vice-Consul.
Scio and Tchesmé, Vice-Consul.
Tenedos, Vice-Consul.
Trebizond, Consul.
Samsun, Consular Agent.

Crete

Crete has an area of 3330 sq. miles, so that it is less than half as large as Wales, and the population is 330,000. The chief towns are Candia (population 22,500) and the port of Canea (25,000), the most important trade centre, which may be reached by Italian and foreign vessels from Constantinople, Naples, and other Mediterranean ports. The valleys and mountain slopes of Crete yield a generous vegetation, but agriculture is at a very low stage. The chief products are olive oil, wheat, oranges, lemons, silk, grapes, wine, valonia, carobs, and honey. The domestic animals in the order of their importance are sheep, goats, oxen, asses, and pigs. The manufactures of interest to foreign trade are soapworks, using olive oil as their raw material, and tanneries.

The export trade has a value averaging about £700,000 annually, one-third of which represents olive oil, and the other important articles are carob beans, raisins, soap, wine, citrons, valonia, silk, sheep and goat skins, and mandarins. The trade is mainly with Turkey and Greece. The value of British imports from Crete fluctuates much from year to year, and depends upon the olive-oil trade, as this is the only article of which importation is regular.

The imports of Crete have an annual value of about £800,000, and again the trade is mainly with Greece and Turkey. The principal items are woollen and cotton cloths, leather, sugar, barley, timber, rice, fish, ironwork and minerals, tobacco, coffee, and butter. The value from Britain fluctuates very much, but may be taken at about £60,000, of which 40 per cent at least is generally for cotton goods, with a few thousands for woollens, and no other article of importance.

The currency of Crete is the same as that of Greece (see "Greece"), and while the metric system of weights and measures is used generally, the *oke* (see "Turkey") is also used as a standard of weight

British Consulates.—

Canea, Consul-General and Vice-Consuls.
Candia, Vice-Consul.
Rethymo, Vice-Consul.

Samos

Samos, an island some 45 miles south-west from Smyrna in Asia Minor, has an area of about 180 sq. miles and a population of 54,000. The capital and chief town is Vathy, which is on the north side. The island is fertile and is cultivated extensively. It produces Muscadine wine, brandy, corn, tobacco, fruit, and vegetables. There is practically no mining, although deposits of

silver, lead, antimony, copper, calamine, manganese, and marble exist. Trade is with Turkey, Austria, and Greece; there is none direct with Britain. The exports and imports have each an annual value approaching £200,000, and the principal articles of export are cigarettes and tobacco, wine, raisins, leather, oil, brandy, and carobs

Tripoli

This North African province of Turkey lies between the Mediterranean coast and the Libyan Desert and has an area of about 400,000 sq. miles. The population is said to be about 1,000,000, nearly all Moors in the towns and Bedouins away from the towns. The chief town is the port of Tripoli, which has a population of about 40,000. There are no railways.

Tripoli may be reached from Alexandria, Malta, or Tunis, the sailings from these places being weekly or semi-weekly.

The resources are agricultural only. The chief crop is barley, and other agricultural products are wheat, dates, oranges, olives, lemons, and esparto grass. Cattle and sheep are reared, and the sponge fisheries are of value. The trade with the south is a caravan trade and the export and import trade by sea is through the port of Tripoli. The exports have a value of about £400,000 annually, the chief items being esparto, skins and hides, sponge, ostrich feathers, and ivory. Over one-half of the exports come to Britain, the principal articles being barley and esparto, with a little ivory which finds an outlet through Tripoli from Central Africa.

The imports of Tripoli have about the same annual value as the exports—£400,000, and quite one-third are from Britain, nearly the whole proportion being for cotton goods.

British Consulates.—

Tripoli, Consul-General and Vice-Consul.
Khoms, Vice-Consul.

UNITED STATES OF AMERICA

The area of the United States, including the territories of Alaska and Hawaii, is 3,571,492 sq. miles, so that it is almost 30 times as large as the United Kingdom. The population exceeds 90 millions, which is twice that of the United Kingdom. The coloured and negro element, which is located chiefly in the southern states of the Union, numbers about 10,000,000 The Indian and Asiatic elements are very small—between 300,000 and 400,000 altogether. The remainder constitute the "American people", for the term that should properly apply throughout the whole area of the continent is used to designate the inhabitants of only a section of it. This American people is composite, containing blood from every soil of Europe, but welded into a solid national unity, almost as strong and cohesive for political and industrial purposes as if it were descended exclusively from the American colonists of early days.

The Atlantic states contain less than one-eighth of the whole area, but two-fifths of the whole population, the most populous states being New York and Pennsylvania. The western states, containing almost one-third of the whole area, have only about 5 per cent of the population, but their immigration as well as their natural increase is greater than in the east.

The city of New York, with a population of over 4,000,000, is the commercial capital of the country, the centre of trade in the east, and the chief port. Chicago, with a population of more than 2,000,000, is the metropolis of the lake states, as New Orleans (315,000) is of the Gulf states, and San Francisco (360,000) of the Pacific states.

The chief ports of the Atlantic are Portland (Maine), 55,000; Boston (Massachusetts), 600,000; New York; Philadelphia (Pennsylvania), 1,440,000; and Baltimore (Maryland), 553,000. On the Gulf of Mexico the chief ports are New Orleans (Louisiana), at the mouth of the Mississippi, and Galveston (Texas), 34,000. On the Pacific coast the chief ports are San Francisco (California); Portland (Oregon), 110,000; and Seattle (Washington), 104,000. The federal capital is Washington D.C. (307,000), but it is a social and political capital, not a commercial city. The important inland industrial and commercial centres are Pittsburg (Pennsylvania), 375,000; Cleveland (Ohio), 460,000; Buffalo (New York), 382,000; Chicago (Illinois); St. Louis (Missouri), 649,000; Minneapolis (Minnesota), 274,000; St. Paul (Minnesota), 204,000; Denver (Colorado), 152,000; Los Angeles (California), 116,000. Many cities are more populous than some of these, but these are the strategic centres of trade in their respective districts.

Shipping and Railways

Communication between Britain and the United States is frequent and rapid. New York is reached from London direct by the Atlantic Transport Line; from Southampton by the White Star Line, the American Line, the Norddeutscher Lloyd Line, and the Hamburg-Amerika Line; from

Liverpool by the Cunard Line and the White Star Line; and from Glasgow by the Anchor Line.

Boston is reached from Liverpool by the Cunard Line and by the White Star Line, and Philadelphia is reached from Liverpool by the American Line.

More than half the shipping entering and clearing at United States ports is British, and less than one-fourth claims American nationality. Of the foreign trade, only about 10 per cent of the total tonnage entered and cleared is in United States bottoms.

There are about 240,000 miles of railway operating in the United States, and all commercial points are well served.

Resources

The forests of the United States cover about 1,000,000 sq. miles, almost one-third of the entire area. Of the industries, lumber is the fourth in importance, being surpassed by the iron and steel industry, by the textile group, and by the meat industry The principal lumber districts are the eastern states, the lake states, the Rocky Mountain slopes, and the Pacific states of California, Washington, and Oregon. But the United States has been reckless in its treatment of its timber wealth, and Michigan lumbermen are becoming more and more indebted to Canada. Still, the annual exports of lumber and timber have a value of about £12,000,000, independent of manufactured timber. The chief timbers sent to Britain are fir and oak, most of the quantity being planed and dressed.

Britain is, of course, the chief market for most of the surplus agricultural produce of the United States, although the latter is not our most important contributor of cereal foods. About 200,000,000 acres are under grain crops in the United States, and the production is about 600,000,000 quarters annually. Both in acreage and yield maize is easily first, with almost 60 per cent of the total harvest. Oats come second, wheat third, followed by barley, rye, rice, and buckwheat. But, from the point of view of Britain, wheat is the most important crop, because our importation of it is more than three times that of maize. The states of Kansas, Nebraska, Indiana, Ohio, Illinois, Pennsylvania, Missouri, Minnesota, Washington, and North and South Dakota are the greatest wheat states, and the wheat "pits" of Chicago and Minneapolis are the principal wheat markets of the world. The principal non-cereal crops, judged by acreage, are hay, cotton, potatoes, flax seed, tobacco, and sugar cane. For Britain cotton holds first place.

About 60 per cent of the cotton crop is exported. The proportion used to be greater, but, although the crop doubled in little more than a decade, the expansion of the domestic manufacturing industry has absorbed a much larger proportion than formerly. Almost half of America's cotton exportation finds a market in Britain, and one-third of it goes to Germany. Cotton is, of course, the product of the southern states

The live stock of the United States is even more important to Britain than the cereals, numbering, chiefly in the north-west and mid-west, about 80,000,000 head of cattle, 60,000,000 sheep, and 60,000,000 pigs

The chief fruit crops are apples, raisins, oranges, lemons, prunes, and grapes, and the California wine industry affords an outlet for the last-named. For Britain, apples excel all other of America's fruits in importance, and her annual importation often approaches £1,000,000. The other fruits purchased from the States are preserved plums, prunes, pears (fresh and dried), and oranges. Yet another agricultural product of importance is hops, of which the export to Britain is about £500,000 annually, and has on one occasion been over £1,000,000.

The mineral resources of the United States are enormous, and give employment to about 750,000 workpeople. Two countries only employ a greater number of hands in mineral recovery—the United Kingdom and Germany. More than half the world's copper is mined in the United States, more than one-fifth of the gold, almost half the iron, quite one-third of the lead, more than half the petroleum, almost a quarter of the salt, more than a quarter of the silver and zinc, and over one-third of the coal, the output of the last being 50 per cent in excess of Britain's output. One-fourth of the coal is anthracite. Other less important minerals are quicksilver, antimony, platinum, phosphate rock, zinc white, graphite, mica, and borax. Aluminium reduction is also important, but scarcely ranks as a mining industry.

The fisheries of the United States are chiefly on the Atlantic coast, where about 40 per cent of the total value is recovered, but a great proportion of this is caught on the Newfoundland banks. Cod, herring, and mackerel are cured in Massachusetts. Sardines are tinned in the state of Maine, and the salmon-canning in Alaska and the states of Oregon and Washington, on the Pacific coast, is a great industry.

Manufacturing Industries

The manufacturing industries of the United States are too vast and varied to be adequately

described in a paragraph, and space prevents much more. The United States is the greatest manufacturing country in the world. In no other industrial community are the economics of production better understood; nowhere is the science of commerce followed more closely. The vast resources are exploited to a degree much nearer their maximum capacity than anywhere else. Add to this that the people bring to their industrial problems a genius for invention, a keenness to adopt labour-saving machinery and waste-saving systems that cut the cost and the selling price, while they increase the profits upon invested capital and enterprise. There we see the reasons for the rapid advance of the great territory into the front rank of manufacturing nations, with a productive activity such as the world has never before seen.

It is calculated that the raw materials used annually in American manufacturing industries exceed £2,000,000,000, and that the products issue worth £4,000,000,000 The figures include only factory output, not industries such as tailoring, sawmilling, plumbing, and those not generally considered factories. In the group "food and kindred products" the most important industry is meat-packing, followed by flour-milling, dairy produce (cheese, butter, and condensed milk), fruit, vegetable, and fish canning, rice cleaning and polishing, and sugar-refining. In the department of textiles some 800,000 looms are at work, the output according to value being comprised of cotton goods, woollens and worsteds, silks, hosiery and knitted goods, and carpets and rugs. The daily capacity of the blast furnaces is about 80,000 tons. In the metallurgical departments the various products rank in value of output as follows · bessemer-steel ingots, iron and steel bars, blooms, plates, and hoops, steel rails, basic open-hearth steel ingots, structural shapes of open-hearth steel, structural shapes of bessemer steel; armour plate and zinc forgings, and crucible ingots. The production of tinplates exceeds £6,000,000 annually. Lumber and its manufactures are represented by an annual output value of about £300,000,000; leather and leather goods, about £200,000,000; paper and printing, about the same; liquors and beverages, over £100,000,000; chemicals and allied products, over £200,000,000; clay, glass, and stone products, £80,000,000; non-ferreous metals, £200,000,000; tobacco, £65,000,000; vehicles, £130,000,000; and ships, £16,000,000. The last mentioned (ships) is the only industry where a poor result is shown, and this is the price that the United States has to pay for the extraordinary success in other industries. The industries have been built up by a policy of fiscal protection, which weakens foreign competition in the domestic market But the shipping of a country, except its coastwise shipping, is open to the competition of foreign nations, and the high cost of ship construction occasioned by the protective policy has prevented the United States from taking its otherwise rightful place among the shipowning nations of the world. Such a cursory examination of the industries of the greatest industrial nation in the world is nothing more than an indication of the high degree to which the manufacturing arts have been carried by Britain's keenest competitor in the world's markets.

Exports

The total value of the exports of the United States is about £360,000,000 annually. This immense total is composed roughly of cotton (raw and manufactured), 27 per cent; breadstuffs, 10 per cent; iron and steel and manufactures thereof, 9 per cent, meat and dairy products, 10 per cent; mineral oil and its products, 7 per cent, leather and leather goods, 3 per cent; lumber, 4 per cent: copper and its manufactures, 5 per cent. These are the great departments of American export trade. The branches that have increased greatly during recent years are copper, cotton, iron and steel, certain classes of machinery (including locomotive and stationary engines), sewing machines, typewriters, electrical machinery and metal-working machinery, and lumber. Bread and meat products and mineral oil have exhibited only moderate increases.

In addition to these main departments, which account for 70 per cent of the entire export value, there is a wide variety of merchandise, and of this the classes that exceed £1,000,000 annually are agricultural implements, cattle, vehicles, chemicals and drugs, coal, carriages and cars, vegetable oils paraffin and paraffin wax, fertilizers, fruits and nuts, furs, rubber goods, naval stores, oilcake paper, seeds, fish, sugar, books and maps, scientific instruments, and tobacco.

The United Kingdom is by far the most important market for American produce and manufactures, absorbing about one-third of the total exports. Germany is second, her share of United States exports being about 14 per cent of the total the other chief purchasers being British North America, France, Holland, Mexico, Italy, Belgium, Cuba, Japan, Argentina, Australasia, China Brazil, Russia, Austria, and Spain.

The importance of Britain and the United States to each other is brought into relief when we see the overwhelming value of the British market to the American producer. Quite one

third of Britain's purchases represent cotton. Three-quarters of the raw material for the cotton mills of Lancashire comes from the United States, and as more than one-quarter of the entire export value of Britain consists of cotton manufactures, the cotton supply of the southern states of the American Union is the very life-blood of British industrial being. The classes in which British imports from the United States generally or often exceed the value of £5,000,000 are oxen and bulls, wheat, bacon, and fresh beef. Between £3,000,000 and £5,000,000 come maize, wheat meal and flour, lard, leather, hams, timber, mineral oils, copper, and tobacco. Between £1,000,000 and £3,000,000 come machinery, barley, skins, and furs, and paraffin wax. Of the numerous classes of merchandise imported into Britain there are many for which the United States is the chief source of supply. The list is as follows:—

Cotton.
Live oxen and cows.
Live sheep and lambs.
Revolvers.
Sausage skins.
Printed books.
Boots and shoes.
Cordage.
Methylic alcohol
Organs and harmoniums.
Animal oil.
Petroleum.
Cotton-seed oil.
Turpentine.
Cotton-seed cake.
Oleo-margarine.
Wheatmeal and flour.
Maize meal.
Cutlery.
Drugs.
Hops.
Bacon, hams.
Salted beef.
Copper ingots.
Bolts and nuts.
Paraffin wax.
Soap.
Varnish.
Playing cards.
Molasses.
Canned fruit.
Implements and tools.
Lamps and lanterns.
Lard and imitation lard.
Dressed and undressed leather.
Agricultural machinery.
Machine tools.
Typewriters.
Sewing machines.
Clover and grass seeds.
Many kinds of timber.
Furniture and wooden ware.
Preserved plums.
Some alcoholic beverages.
Unmanufactured tobacco.
Phosphate Rock.

The great wealth in natural products, and the excellence and variety of her manufactures, give the United States her pre-eminence in the British market. Imports into Britain from the United States are much in excess of the imports from any other country. They are twice as much in value as the imports from Germany, the second country on the market. Constituting one-quarter of the total imports from foreign countries, they are almost equal in value to the aggregate value of all the imports from British colonies and possessions.

Imports

As Britain is the chief selling market of the United States, so the United States is the chief market for British produce and manufactures. But, although each is supreme in the markets of the other, there is a wide difference in the relative values of the trade from each to each. The United States supplies Britain with about one-fifth of her purchases, and Britain supplies the United States with about one-sixth of her imports. The difference is not great in proportion, but, on account of the imports of Britain being so much in excess of the imports of the United States, the difference in specific value is very great. Britain sells to the United States one quarter to one-third the value she purchases from the great republic. The imports of the States have a value of over £270,000,000 annually. Britain is easily first among the contributors, with one-sixth of the total, as we have seen; Germany is second with one-ninth, France third with one-twelfth, and then follow Brazil, British North America, Japan, British East Indies, Italy, Mexico, China, Holland, Belgium, Switzerland, and Cuba.

The most important individual item among United States imports is sugar, followed by raw silk, coffee, hides and skins, and chemicals. These items account for about one-third of the total value of imports. Textile manufactures are the next important group—cottons, linens, silks, and woollens in the order given—this group totalling one-seventh of the entire import value. It is this department that Britain finds so important. The next group comprises certain raw materials for the mills and factories of the Union—raw rubber, raw wool, flax, hemp, jute, tin, and copper—this group constituting almost one-sixth of the total value. The other departments having annual values over £5,000,000 are iron and steel manufactures, tobacco, fruits and nuts, jewellery and gems, spirits and wines, copper manufactures, furs, and wood manufactures. The list of United States imports is composed chiefly of raw products—the food of her industries—while the imports of Britain consist to a greater extent of the food of her people.

We have seen that Britain's principal contribution to the imports of the United States belong to the textile group. Of the total British exports to that country—about £30,000,000 annually—quite 40 per cent consists of manufactured or semi-manufactured textiles. Linen goods are the most important items in the group, and then come cottons, woollens, jute manufactures, and silks. After textiles the most important department is iron and steel and its manufactures, which claim about one-seventh of the total value. The principal item in the department is spiegeleisen and ferro-manganese pigs, followed by other pig iron, tinplates, wire, rolled sections, plates and

sheets, and galvanized sheets. In no other branch does the annual trade exceed £1,000,000, but departments that usually exceed half that sum are china and earthenware, machinery, and skins and furs The other important items in the list—the trade generally exceeding £100,000 annually—are beer, books, cement, bleaching materials, coal products, soda compounds, clay, electrical goods, fish, glass manufactures, raw hides, manure, brass goods, tin, oils, oilcloth, painters' colours, paper, rags and paper making materials, seeds, ships, spirits, and stationery.

Customs Duties

The following are typical of the duties levied in the United States upon produce and manufactures of the United Kingdom (see also Chapter II of this Part):—

Cotton sewing thread on spools, 3*d.* per dozen spools of 100 yards.
Cotton velvets, dyed, 6*d.* per square yard, plus 25 per cent of value.
Woollen shawls, 1*s.* 10*d.* per lb., plus 60 per cent of value.
Steel rails, 10*d.* per cwt.
Cutlery—penknives, worth over 12*s.* 6*d.* per dozen, 10*d.* each, plus 40 per cent of value.
Machinery, 45 per cent of value.
Tinplates, 5*s.* per 100 lb.
Leather belting, 5 per cent *ad valorem.*
Rubber shoes, 35 per cent *ad valorem.*
Wallpaper, 25 per cent *ad valorem.*
Varnish (oil), 25 per cent *ad valorem.*
Paraffin wax, free.
Coal, 1*s.* 10½*d.* per ton of 2240 lb.
Cement, 4*d.* per 100 lb.
Copperas, 7½*d.* per 100 lb.
Beer in casks, 11½*d.* per gallon.
Herrings, pickled or salted, 2*s.* 1*d.* per 100 lb.
Candles, 20 per cent *ad valorem.*

Certificates of origin in the United States are required only in the case of goods from the Philippines, which are favoured by a special tariff. But all goods imported that can be marked, stamped, or labelled with the name of the country of origin, without injury, must be so marked, and every package must be so marked. The invoices for all foods and drugs imported into the United States must have attached to them a declaration of the shipper, made before a United States consular officer, in a special form. There are also special regulations regarding imported meats, which must be vouched as free from disease. The invoices for all consignments of goods having a value in excess of $100 must be certified by a United States consul. The formalities in Hawaii are identical with those in force in the United States.

Local Regulations

There are no special regulations affecting commercial travellers, and no licence is necessary. Samples of value pay duty, which is not returnable under any circumstances.

The monetary unit is the dollar, which contains 100 cents, and is worth 49·32 pence (4*s.* 1⅓*d.*). One pound sterling equals 4·8665 dollars. The weights and measures generally are the same as in Britain, but the United States gallon equals ·833 imperial gallon (6 U.S. gallons = 5 imperial gallons) The short ton of 2000 lb. is used as well as the long ton of 2240 lb.

British Consulates.—
Baltimore, Consul and Vice-Consuls.
Newport News, Vice-Consul.
Norfolk, Vice-Consul.
Richmond, Vice-Consul.
Boston, Consul-General and Vice-Consuls.
Portland, and all ports of entry in Maine, Vice-Consul.
Chicago, Consul-General and Vice-Consul.
Denver, Vice-Consul.
Detroit, Vice-Consul.
Duluth, Vice-Consul.
Omaha, Vice-Consul.
St. Paul, Vice-Consul
Galveston, Consul and Vice-Consul.
Sabine Pass and Port Arthur, Vice-Consul.
New Orleans, Consul-General and Vice-Consul.
Apalachicola, Vice-Consul.
Biloxi, Vice-Consul.
Fernandina, Vice-Consul.
Gulfport, Vice-Consul.
Jacksonville, Vice-Consul.
Key West, Vice-Consul.
Mobile, Vice-Consul.
Pensacola, Vice-Consul.
Port Tampa, Vice-Consul.
New York, Consul-General, Consul, and Vice-Consuls.
Buffalo, Vice-Consul.
Providence, Vice-Consul.
Philadelphia, Consul and Vice-Consuls.
Cincinnati, Vice-Consul.
Cleveland, Vice-Consul.
Pittsburg, Vice-Consul.
Portland, Ore., Consul and Vice-Consul.
Astoria, Vice-Consul.
Grays Harbour, Vice-Consul.
Port Townsend, Vice-Consul.
Seattle, Vice-Consul.
Tacoma, Vice-Consul.
St. Louis, Consul.
Kansas City, Vice-Consul.

San Francisco, Consul-General, Consul, and Vice-Consul.
Los Angeles, Vice-Consul.
San Diego, Vice-Consul.
Savannah, Consul.
Brunswick, Vice-Consul.
Charleston, Vice-Consul.
Darien, Vice-Consul.
Port Royal and Beaufort, Vice-Consul.
Wilmington, Vice-Consul.
Washington, Vice-Consul.

Possessions of the United States

Apart from the United States proper, which is bounded on the north by Canada and on the south by Mexico and the Gulf of Mexico, there are several outlying territories under the administration of the United States.

Alaska

This territory, which is included in the figures given above, has an area of 590,800 sq. miles, so that it is about five times as large as the United Kingdom. The population is over 60,000, half being white and almost half native Indian and Eskimos, with a few thousand Chinese and a few hundred Japanese and negroes. There are ten towns, the largest being Nome, on the west coast, with a permanent population of about 3500, and the administrative seat is Juneau (1300).

There are some railways in operation and under construction. The principal industries are fishing (seal and salmon) and mining—gold, silver, copper, lead, and coal. The sealskins of Alaska, which number 12,000 to 20,000 annually, reach the outer world through the channel of the United States. The salmon canning and salting establishments number about 70, and the annual catch is worth about £2,000,000. The chief mineral is gold, and the annual output is worth about £5,000,000. There is no direct trade between Alaska and Britain.

British Consulate.—
Nome, Vice-Consul.

Porto Rico

This West Indian island, retained after the war with Spain, has an area of 3435 sq. miles (half the size of Wales), and the population is about 1,000,000, sixty per cent white. The chief town is San Juan, with a population of 32,000. There are several steamship lines between New York and Porto Rico. The chief products are sugar, coffee, cotton, tobacco, and salt. The exports have an annual value of about £6,000,000, and the imports of about £6,000,000. The exports of Porto Rico to the United Kingdom are unimportant, the total value being only a few thousand pounds yearly; and the return trade is worth about £60,000 annually, the chief items being machinery, empty bags, implements and tools, cottons, linens, and biscuits.

British Consulates
San Juan, Consul and Vice-Consul.
Arecibo, Vice-Consul.
Arroyo de Guayama, Vice-Consul.
Humaçao, Naguabo, and Fajardo, Vice-Consul
Mayagüez, Vice-Consul.
Ponce, Vice-Consul.

Hawaii

The total area of the islands is 6449 sq. miles, and the population is about 180,000. Honolulu, the political capital and the commercial port, has a population of about 40,000. San Francisco is in direct steamer communication with Hawaii by means of several services, and New York with Honolulu. (See Shipping Routes, Part V.) The chief industries are the cultivation of sugar and rice; but coffee, honey, hides, sisal fibre, bananas, pineapples, wool, whale oil and bone are also exported. The greater part of the trade is with the United States. The exports are worth about £8,000,000 annually, and the imports about £5,000,000. There are practically no exports from Hawaii to the United Kingdom, and the exports of the United Kingdom to Hawaii have a value of not more than £100,000 annually, mostly for sulphate of ammonia.

British Consulate.—
Honolulu, Consul.

Guam

This small island (200 sq. miles in area) in the Ladrones is a United States naval station, and has a population of about 12,000. There are sailings between San Francisco and Guam monthly. The exports are only of the value of about £4,000 yearly, nearly all for copra. Trade figures are included with the Philippine returns.

Samoa

The United States possesses a few islands of the Samoan group, the largest being Tutuila, with the port of Pago Pago, the only good harbour in the archipelago, and a United States naval station. The population of American Samoa is

about 6000, and the chief products are copra and fruits. There is no trade with the United Kingdom.

Philippines

The Philippine Islands number over 3000, and have a total area of 127,000 sq miles, which is just a little more than the area of the United Kingdom. The population is about 8,000,000, of whom about 1,000,000 are uncivilized. The capital, chief trade centre, and port is Manila (population, 220,000). Manila is reached from Liverpool every four weeks by the Transatlántica Steamship Company, and from London via Hong Kong by the P. & O. and North German Lloyd lines. The lines of steamers connecting United States ports and Manila are as follows: Barber Line from New York, Singapore, and Japan; Occidental & Oriental Steamship Company from San Francisco and Hong Kong; Pacific Mail Steamship Company from San Francisco and Hong Kong; Philippine Transportation & Construction Company from New York and Hong Kong; United States & China-Japan Steamship Company from Chinese and Japanese ports, Singapore, and New York. The products are all agricultural, although industrial methods are antiquated. Under Government organizations progress towards more scientific practice is being made. The islands are rich in natural resources. The chief products are manila hemp, sugar, coffee, rice, copra, tobacco, and indigo. There are also valuable timbers, especially hardwoods, gums, and dye woods. There are many valuable mineral deposits, but they have not yet got beyond the prospecting stage. The exports have a value of over £6,000,000 annually, 60 per cent of this being for hemp. The other articles of importance are sugar, copra, tobacco, cigars, maguey, and gums and resins. Of the exports, 35 per cent reach the United States, about 20 per cent go to Britain, 15 per cent to France, and 15 per cent to Hong Kong and China. Britain's share is almost entirely for hemp. The imports, which have a value of about £6,000,000 annually, consist chiefly of cotton goods, rice, meat and dairy products, iron and steel goods, wheat flour, and oil. Britain is the largest contributor of imports, with about 20 per cent of the total. Her share consists chiefly of cotton manufactures, iron, machinery, and linens.

Certificates of origin are required for goods imported from the United States, to which favoured duties apply. Meat and meat food products, from whatever country, must have a certificate of origin in a special form.

British Consulates.—

Manila, Consul-General and Vice-Consul.
Cebu, Vice-Consul.
Iloilo, Vice-Consul.

URUGUAY

(See also South America)

Uruguay is the smallest of the South American republics, but it is far from being the least important. The population is chiefly of European birth or descent. The capital and chief port is Montevideo (310,000), so that over one-fourth of the entire population of the country is in the capital. The railways of the country, all British-owned, have a length of about 1400 miles, and are extending rapidly. The country is not mountainous, and the roads are good.

Resources

The chief industry of Uruguay is stock-raising. The exports of live stock and animal products constitute 95 per cent of the total. The area under crops and the returns are expanding year by year. The chief cereals are wheat, maize, linseed, oats, bird seed, and barley. Other crops include tobacco, olives, and fruit. Beet sugar has been established as an industry. Gold is the only mineral worked, but deposits of silver, copper, lead, magnesium, and lignite are known.

The exports of Uruguay have an annual value of about £8,000,000, the item of greatest value being raw wool, with 40 per cent of the total value. Ox hides and sheepskins account for 25 per cent of the total value, and other items of importance are salted and smoked meat, extract of meat, tallow, living animals (sheep, cattle, horses) horse hair, linseed, and guano. The chief articles imported into Britain from Uruguay are meat, raw wool, rubber, tallow, mutton, wheat, hides, and skins. The value to Britain is about £1,300,000 annually.

Imports

The imports of Uruguay have an annual value of over £7,000,000. The chief articles are cotton goods, sugar, wood and its manufactures, coal, wine Paraguay tea, cashmeres, iron, steel, and hardware wire, kerosene, olive oil, paper, apparel, rice, and agricultural machinery. The chief contributor is the United Kingdom with 30 per cent of the total followed by Germany with 15 per cent, France with 12 per cent, and the United States with

10 per cent. The chief classes of merchandise sent from Britain are coal (30 per cent), cottons (25 per cent), iron goods, woollens, machinery, chemicals, and jute goods.

Local Regulations

For commercial travellers visiting Uruguay a licence is necessary, costing $100 (£21) per annum, and expiring on December 31. The full charge is made, no matter when the licence is taken out. On the Central Uruguay Railway 1000 kilometre coupons are issued to travellers for £4, 3*s.* 4*d.*, 30 kilos of luggage are allowed free, and excess weight is carried at reduced rate. Samples enter duty free if a bond be given for their re-exportation.

The standard of money is the *peso fuerte* or dollar (100 centavos), which is worth 4*s.* 2*d.*

British Consulates.—

Montevideo, Consul-General and Vice-Consuls.
Fray Bentos, Vice-Consul.
Maldonado, Vice-Consul.
Paysandu, Vice-Consul.
Salto, Vice-Consul.

VENEZUELA

(See also South America)

Venezuela, which has an area more than three times that of the United Kingdom, borders on the Caribbean Sea, and, although the climate in the low valleys is tropical, much of the country is high plateau where conditions are more conducive to industrial activity. The agricultural lands constitute about one-fifth of the area of the country, and agriculture is chiefly confined to the mountainous belt in the north, where the population of the country is concentrated. Political power has been held for many years by arbitrary presidents with no ideas of government beyond personal aggrandisement. There has been little security for capital, particularly foreign capital, and the unquestioned resources of the country have scarcely been tapped. The capital is Caracas, with a population of 80,000, which stands 3000 feet high, and the port is La Guayra (11,000). Other chief towns are Valencia (39,000), Maracaibo (35,000), and Barquisimeto (32,000). Eight of the twelve railway lines are owned by foreign capital. Away from the railways the usual methods of transport are primitive, due to the absence of roads.

Resources

The country is divided naturally into distinct zones, one being suitable for tillage, the second for pasture, and the third being forest land. The chief products of agriculture are coffee, cacao, sugar cane, tobacco, wheat, maize, cotton, and tropical fruits. Indigenous products, which are now cultivated to some extent, include rubber, tonka beans, copal, sarsaparilla, cinchona, and other drugs. The chief stock is cattle, of which there are well over 2,000,000 head in the country, and the other stock consists of sheep, goats, horses, mules, asses, and pigs. The country is rich in minerals, the chief of which is gold, one mine producing £600,000 worth annually. Other minerals include copper, coal, asphalt, silver, lead, tin, iron, sulphur, and petroleum. There is pearl fishing round the islands of the northern coast. There are practically no manufactures. The value of the exports exceeds £3,000,000 annually, and represents chiefly coffee and cocoa. The next most important items are balata, hides, cattle, and gold. More than one-third of the exports goes to the United States, between one-fourth and one-third to France, and Britain comes next with only 8 per cent, which consists of gutta percha, rubber, ornamental feathers, cocoa, coffee, and copper and silver ore.

Imports

The imports of Venezuela are of about £2,000,000 value annually. The principal items are cotton goods, flour, lard, rice, and butter. Britain and the United States each supply about 25 or 30 per cent of the imports, with Germany in the third place. The chief merchandise from Britain to Venezuela consists of cotton goods, jute manufactures, woollens, machinery, and metal goods.

Certificates of origin are not required for goods imported into Venezuela, but the country of origin must be stated on invoices which must be legalized by a Venezuelan consul.

Local Regulations

For commercial travellers visiting Venezuela no licence is necessary, but passports are recommended. There are no privileges on the railways. Samples of value enter duty-free if security is given for their re-exportation. The monetary unit is the *bolivar*, which contains 20 centavos and is worth a franc (see "France"). The *peso*, though not a

coin in circulation, is used in accounts, and equals 4 bolivars.

Travellers should be provided with passports bearing the *visa* of a Venezuelan consular officer.

British Consulates.—

Caracas, Vice-Consul.
La Guayra, Vice-Consul.
Maracaibo, Vice-Consul.
Puerto Cabello, Vice-Consul.
Ciudad Bolivar, Consul.
Guiria, Vice-Consul.
Puerto Tablas, Consular Agent.

WEST INDIES

The only islands of the West Indies that do not owe political dependence to one or other of the world's powers are the island state of Cuba and the island of Hayti, which contains the republics of Hayti and Santo Domingo or San Domingo. The West Indian possessions of Britain are considered among the British Colonies, and the possessions of other powers have their place in the treatment of the countries to which they belong.

Shipping

The ports in Cuba, Hayti, and Santo Domingo may be reached from Europe direct by the steamers of the Compagnie Générale Transatlantique, sailing from Havre, Bordeaux, and St. Nazaire. The principal services between the United States and Cuba are by the Benner Line (New York and Havana); the Earn Line (Cuban ports and Philadelphia, monthly); Independent Line (Cuban ports to New York); Morgan Line (New Orleans and Havana, weekly); Munson Line (New York and Matanzas, fortnightly); New York and Cuba Line (twice weekly); P. and O. Line (Florida ports and Havana, thrice weekly); Plant Investment Company's Steamers (Havana and Tampa, Fla.); South Pacific Line (from New York, New Orleans, and Florida ports, thrice weekly); Ward Line (Cuban ports to New York); and Waydell & Co.'s Line (Cuban ports and New York, monthly).

Hayti and Santo Domingo are served by several steamship services from the United States: Atlas Line from New York (fortnightly), Clyde's West India Line from New York, Dutch Royal Mail Steamship Company from New York, Munson Line from New York, Quebec Steamship Company from New York, Mallory Line from Galveston.

The weights and measures in the three states are metric (see "France"). Accounts are kept in United States dollars and cents. None of the states has a currency of its own, and in Cuba and Santo Domingo the money in circulation is chiefly United States money, although Spanish money is still in extended use, the Spanish gold dollar being reckoned as worth 3*s.* 9½*d.* In Hayti the money in circulation is chiefly paper, and the paper dollar is worth 11½*d.* American gold also circulates in Hayti.

Cuba

Cuba has an area of 45,000 sq. miles and is thus one-fourth larger than Ireland. The population is about 2,000,000, about one-third being of negro or mulatto blood. The capital and chief commercial centre is Havana (300,000), and other chief towns are Santiago (46,000), Matanzas (36,000), and Cienfuegos (30,000). All these towns are ports, the principal being Havana and Santiago. There is a well-ordered railway system, with a length of about 1000 miles, connecting the chief inland points with the ports, and the latter with each other.

Since Cuba emerged from the difficulties of political disturbance her resources have played their part in her development. Guided by American skill, backed by American capital, under the stimulus of American example and the encouragement of the nation that gave it political freedom, Cuba has stepped out boldly upon the path of economic progress. Favoured by good harbours, and a geographical position only 100 miles from Florida, and 130 miles from Mexico, it rests on the highway of much international commerce, and its favoured position will be accentuated when the great channel cut through the neck of Panama joins east and west. Great expectations are formed as to Cuba's progress in the near future.

Cuba is essentially an agricultural country, the chief crops being tobacco and sugar, but coffee, cocoa, cereals, potatoes and other vegetables are important, though subsidiary. The island is favourably circumstanced for stock, owing to the abundance of water, the mildness of the winters, and the accessibility to foreign markets. Cattle and horses are raised, but no sheep. The forests contain valuable timbers, of which mahogany is exported. Iron, copper, and manganese are worked, and asphalt beds are also exploited. There are some gold deposits, but little has been made of them.

The exports of Cuba exceed £23,000,000 annually, and of this value 90 per cent represents sugar and tobacco. The only other items worth notice are

fruits, mineral products, and timber. Nearly the whole value finds its market in the United States, and Britain's share of about £1,300,000 annually consists mostly of cigars, molasses, mahogany, and rum. Cuban products enter the United States under a 20-per-cent reduction from the ordinary tariff.

Cuba's imports have a value of about £20,000,000 annually, the principal articles being cotton goods, rice, linen and woollen manufactures, and sugar bags. About 50 per cent of the total is from the United States, the duties upon such goods being about 30 per cent less than upon goods from other countries. Britain's share, about £2,000,000, consists chiefly of cotton manufactures, linens, iron, machinery, woollens, rice, and beer.

Certificates of origin for goods imported into Cuba are not obligatory, but they may be called for to prove special points that may arise. Invoices must be certified by Cuban consuls.

British Consulates.—

Havana, Consul-General and Vice-Consuls.
Cardenas, Vice-Consul.
Cienfuegos, Vice-Consul.
Guantanamo, Vice-Consul.
Matanzas, Vice-Consul.
Santiago de Cuba, Consul.

Santo Domingo and Hayti

Santo Domingo, which is the eastern portion of the island of Hayti, has an area of 18,045 sq. miles, so that it is about one-third as large as England and Wales. The population is about 600,000, a blend of negro, Indian, and Spanish blood. The capital is Santo Domingo (20,000), and other towns are Santiago (12,000) and Puerto Plata, the principal port (15,000). There are a few short railways in the island, but only the great extension of the railway system can develop the resources of the republic, and a spirit of national unity.

The republic of Hayti has an area of 10,204 sq. miles (about one-third the size of Scotland), and the population is estimated to be a little over 1,000,000, the blood being mixed, as in Santo Domingo, and only about 200 being European The capital is Port-au-Prince (100,000), and the principal other towns are Cape Hayti (30,000), Les Cayes (12,000), Gonaives (13,000). There are a few short railways in existence and a scheme is on hand for a railway to connect the capitals of the two republics, but it makes little headway.

The island, of which Santo Domingo is the larger part, has been more generously dowered by nature than any other land in the Western Hemisphere —perhaps in the world. Political stability is an essential before the resources have adequate development. The chief crops of Santo Domingo are sugar, cocoa, bananas, and tobacco. Attempts are being made to introduce cotton and rice. The forests of the island contain a profusion of valuable timbers, such as mahogany, satinwood, logwood, and cedar. Many minerals are found—including iron, gold, nickel, cobalt, silver, mercury, tin, copper, and coal—but none are worked. There are practically no manufacturing industries.

The exports of Santo Domingo have an annual value of about £2,000,000, and the chief items are cane sugar, cocoa, leaf tobacco, bananas, and coffee, with hides, woods, and fibres of much less importance. Two-thirds of the exports go to the United States.

The resources of Hayti are also agricultural, the chief product being coffee, the cultivation of which, however, is hampered by a heavy export duty. Other crops of importance are cocoa and cotton, a variety of hemp, tobacco, and sugar. Logwood and other timbers are cut and exported. Mineral resources are similar to those of the sister republic but are quite unexploited, except for feeble attempts at copper-mining. Some small industries, such as soap, candle, and match manufacturing, help to supply the local market.

The exports of Hayti are not recorded in values, but are estimated at about £500,000. The chief items are logwood, coffee, lignum vitæ, cocoa, cotton, and skins and hides The chief destinations are the United States and France, but exact values to the different markets cannot be given.

The imports of Britain from Hayti and Santo Domingo are not given separately. The value was from £40,000 to £60,000 annually until the island began to export to Britain raw sugar and cotton, when the annual value greatly increased. In addition to these commodities the chief exports to Britain are logwood and cotton seed.

Britain's exports to the two republics are given together in the British trade returns. The aggregate value is about £300,000 annually and two-thirds is for cotton goods, the only other items of importance being metal goods and empty sacks, Santo Domingo's purchases from the United States have a total value of about £600,000 annually, the principal items being breadstuffs and cotton goods. Hayti's imports from the United States have also an annual value of about £600,000. the chief items being provisions, breadstuffs, and cotton goods. There are at present few openings for expanding British trade in Hayti, and it is waste of money to send catalogues of expensive goods and luxuries. In Santo Domingo there are no British commission houses.

Certificates of origin are required for goods im-

ported into Hayti only when from a country with which Hayti has a special convention, and the particulars of form, &c., are stated in the specific conventions. Britain has no commercial convention with Hayti.

Certificates of origin are not required for goods imported into Santo Domingo, but a declaration of the country of origin must be made on the invoice, which must be attested by the consular officer of Santo Domingo in the place of exportation.

British Consulates.—

Port-au-Prince, Consul-General.
Santo Domingo, Vice-Consul.
Aux Cayes, Vice-Consul.
Puerto Plata, Vice-Consul.
San Pedro de Macoris, Vice-Consul.

Passports in the West Indies

Cuba.—Persons intending to reside in Cuba for any length of time should have their names registered at the British Consulate-General.

Hayti.—On arrival, a passport (*visé* by a Haytian Consul) must be shown at the Post Office. It should also be produced and registered at the nearest British Consulate. On leaving the country the *visa* of a British Consul and that of the "Commandant de la Place" (which costs about 2s.) must be obtained.

Dominican Republic.—Passport necessary. In order to leave the country a Dominican passport must, in addition, be obtained, for which a fee of about £1 is charged.

CHAPTER VIII

THE FUTURE OF BRITISH INDUSTRY

An enquiry as to the future of the trade and industry of the United Kingdom must be concerned with something more than an investigation of the ability of the British people, or the possible development of that ability. Unfortunately, the destiny of a nation is not wholly within the control of the nation itself. It is as true of nations as of the individuals which compose them, that "there's a divinity that shapes our ends, rough-hew them how we will". The present position of Britain in the world of trade is partly, and only partly, due to our own endeavours, or to the wisdom or unwisdom of our legislature. Similarly, while the future of Britain may be safeguarded within certain limits, it is not competent for British energy and enterprise, whether exercised individually or collectively, to guarantee the maintenance of our present relative position amongst the nations of the earth, or to secure forever the proud supremacy which British commerce and shipping now enjoy.

Nor is it an easy thing to form a well-balanced opinion as to the changes which may conceivably act and react in the world's future, and alter, to the advantage of some and to the disadvantage of others, the material foundations of prosperity. The world of industry as we know it to-day is based upon certain plentiful supplies of energy of a kind which Man has learned to control and exploit. The world of industry in a time to come may be based upon quite other stores of energy, as yet barely dreamed of. If and when new and superior stores of energy are liberated, it may well be that the distribution of power may be very different from what it is to-day; the mills of man may be found grinding in new areas, and old industrial districts may perforce decay.

Even if no other supplies of power than those now known and used make their appearance in the world, certain comparative changes are inevitable in the quantitative distribution of power amongst the nations of the world. The position of the United Kingdom has already undergone a remarkable change in the last generation, and it is quite impossible either to understand or appreciate recent readjustments in the relative positions of the great nations, or to form an intelligent conception of changes yet to come, without careful examination of available evidence as to power distribution. To that examination let us address ourselves.

The Basis of Modern Wealth

We go to the root of the matter in beginning our survey of the causes of national wealth, and of the conditions determining the relative industrial efficiency of the nations, by considering the *coal output* of the entire world. The essential statistics are given in the following table:—

THE WORLD'S COAL OUTPUT, 1907.

	Tons.	Per Cent of World's Output.
United States ...	429,000,000	39·5
United Kingdom ...	268,000,000	24·6
German Empire ...	202,000,000	18·6
United States, United Kingdom, and German Empire	899,000,000	82·7
All the Rest of the World ...	187,000,000	17·3
All the World ...	1,086,000,000	100·0

The statistics of 1907 are given as those of a recent year of good trade. In any other recent year, however, the proportions are very much the same.

This brief table is all-important. Its figures are the most significant and illuminating that can be produced in connection with the existing industrial position. Properly understood, it is a key to the supremacy of certain nations.

We see that three nations—the United States, the United Kingdom, and Germany—possess such an extraordinary monopoly of the world's coal output that they dwarf, not merely any other fourth nation, but *all the rest of the world put together*. Between them, the three favoured nations had in 1907 a coal output of 899,000,000 tons (avoirdupois) as against a production of only 187,000,000 tons by all the rest of the world. Three countries produce nearly 83 per cent of the world's coal.

The same three nations have an overwhelming lead in trade and industry. That is not a mere coincidence. In the present development of applied science, the world's industrial power is almost entirely derived from the burning of coal. As coal is an exceedingly bulky and weighty substance, it is costly to transport. Therefore modern large-scale industry can only be carried on with economy in the neighbourhood of the world's coal mines. Therefore those countries which produce coal are the natural seats, under present circumstances, of machine industry. Therefore the United States, the United Kingdom, and Germany are supreme in the world of industry

This has been termed the Age of Iron, and it is true that it is the extended use of iron which distinguishes modern work from that of either the Ancients or the Middle Ages. But in our present dependence upon the burning of coal for the production of power, to say that this is the Age of Iron is really to say that this is the Age of Coal. More coal than iron goes to the making of pig-iron or crude steel. Time was when the magnificent forests of Britain were ravaged and despoiled in order to produce charcoal for the smelting of iron. What a gulf separates modern industry from that of our forefathers may be judged by the fact that our existing British work upon iron, if done by the agency of wood fuel, would call for more timber than could be grown in the United Kingdom if the whole of its area were devoted to afforestation. We do well to remind ourselves of these facts, for in this enquiry we have to keep before us the possibility of changes in power production even more remarkable than the transition from wood fuel to coal fuel.

What has been said with regard to the determination of industrial output by coal output is illustrated in regard to the most important of all industries by the table on p 59, which, again for the year 1907, compares the world's coal output with (1) the world's production of pig-iron, and (2) the world's production of steel.

The figures in this remarkable table are collected by the British Board of Trade from the official returns of the chief nations, supplemented by estimates in the case of small states which do not publish statistics. The margin of possible error is quite negligible.

Because three nations—the United States, the United Kingdom, and Germany—produce eight out of every ten tons of coal produced by all the world, they are gifted with a natural monopoly of the world's iron and steel trade. They produce 82·7 per cent of the coal, 80·6 per cent of the pig-iron, and 81·1 per cent of the steel produced by all the world. Coal is revealed as the arbiter of industry. The three leading nations differ not a little in the gifts of their people, and in the degree to which they have respectively attempted to develop those gifts by systematic education. At present, however, the possession of coal altogether outweighs the matter of personnel in the attainment of material wealth.

It has been necessary to insist upon the importance of the possession of fuel at the outset in order to get our case into proper perspective. Jevons published his *magnum opus*, *The Coal Question*, in which the relation of the possession of coal to the future of British industry was first thoroughly investigated, in 1865. The coal question is now as much "of almost religious importance" as when Jevons wrote the treatise which made Gladstone determine that it was one of the first duties of the statesman of a coal country to reduce the National Debt in order to compensate posterity for loss of coal. It is to be feared, however, that it is but a very small proportion of our people who yet appreciate our fundamental reliance upon industrial power derived from coal.

What Coal Exportation Means to the United Kingdom

The oversea trade of the United Kingdom occupies but the smaller part of our working population, and it is much smaller than our domestic trade. This undoubted fact has misled some of those who have endeavoured to form a true conception of the relation of the work of the British people to that of the world at large. The importance of our oversea trade is not to be measured by its ratio to our home trade. The truth of the matter is that our oversea trade is the indispens-

HOW COAL RULES IRON

THE WORLD'S OUTPUT OF (1) COAL, (2) PIG-IRON, AND (3) STEEL, 1907

	COAL.		PIG-IRON.		STEEL.	
	Tons.	Per Cent.	Tons.	Per Cent.	Tons.	Per Cent.
United States	429,000,000	39·5	25,800,000	42·8	23,400,000	45·4
United Kingdom	268,000,000	24·6	10,100,000	16·7	6,500,000	12·6
German Empire	202,000,000	18·6	12,700,000	21·1	11,900,000	23·1
United States, United Kingdom, and Germany ...	899,000,000	82·7	48,600,000	80·6	41,800,000	81·1
All the Rest of the World ...	187,000,000	17·3	11,600,000	19·4	9,700,000	18·9
All the World	1,086,000,000	100·0	60,200,000	100·0	51,500,000	100·0

able feeder of our home trade Our dependence upon foreign materials of industry is much greater than our dependence upon foreign food. Apart from fuel, our native raw materials are scanty, and are year by year becoming scantier, relatively to our growing population. At the present time, broadly speaking, we feed about one-half of our population with home-grown food. With regard to materials, the case is very different. Some of our industries are wholly dependent on foreign materials, most of them are largely dependent on oversea supplies. This fact is so often forgotten that, in discussions as to what our position would be in war time, it is the food question which is chiefly debated, it being easily overlooked that with oversea materials cut off, our population would cease to work and cease to have the means to buy food. Between materials and food together, our entire activities may be said to be dependent upon our oversea trade, the earnings of our ships, and the interest receivable on our oversea investments. The last-named item, while considerable, accounts for but one-sixth or one-seventh of our imports. Without our exports and our mercantile marine, our home trade would collapse as surely as a human being would collapse if deprived of nourishment.

In the year 1910 our total imports into the United Kingdom were valued (c.i.f.) at £678,000,000. Our exports of merchandise were valued (f.o.b.) at British goods, £431,000,000; imported goods re-exported, £104,000,000; total, £535,000,000. Our ships earned fully £100,000,000, and the interest received or receivable on oversea investments was at least £120,000,000. Thus our exports of goods and services were greater than our imports by at least £77,000,000, which means that imports receivable were to that extent not brought in, but reinvested abroad, adding to our lien upon the world.

It is of the first importance to realize that our exports and our shipping — together our chief means of obtaining our indispensable supplies of oversea food and raw materials—almost entirely depend upon our possession of coal, and of coal available at a competitive price. The table in the next column is a statement of the value of our exports in 1875–1910.

This table, by analysing our exports, shows that they chiefly consist of manufactured articles, and that the part which does not consist of manufactures is largely accounted for by exports of coal. It may be added that a part of the remainder, not classed by the Board of Trade under the heading "manufactures", really consists of manufactured articles. Under the heading "food, drink, and tobacco exports", which in 1910 were worth £26,000,000, a large part consists of *manufactured* food and tobacco. It is almost true to say that in 1910, of our total exports of British goods worth £431,000,000, as much as about £412,000,000 consisted either of manufactures or of coal.

UNITED KINGDOM EXPORTS: (1) TOTAL EXPORTS OF BRITISH GOODS, (2) COAL EXPORTS, (3) EXPORTS OF MANUFACTURES

(*In Millions of £*)

Annual Average of	Total Exports of British Goods	Exports of Coal.	Exports of Manufactures.
1875–9	201·5	8·2	178·1
1880–4	234·3	9·6	206·4
1885–9	226·2	11·3	196·9
1890–4	234 4	17·3	199·1
1895–9	239·6	17·7	201·4
1900–4	288·7	30·1	231·2
1905–9	377·3	35·7	302·1
In the Year 1910	430·6	37 8	343·0

Our exports of coal have grown chiefly through the growth of our mercantile marine. As the steamship has supplanted the sailing ship, and as our steamships have increased until they number in effective tonnage far more than one-half of the world's steamships, our exports of coal to foreign ports have increased, and have been made largely for the bunkers of our own ships coaling abroad.

But our exports of coal *as coal* form the smallest part of our virtual coal exports. Our great exportation of manufactures exhibited in the above table, *plus* our exports of manufactured food and drink and of tobacco, *constitutes as real an exportation of British coal as the shipping of coal as coal.* If, for example, we export, as we did in 1910, 1,206,000 tons of pig-iron, we virtually export about 2,400,000 tons of coal, for each ton of pig-iron is smelted by the using up of two tons of coal. And so it is, of course, in some degree or other, with each item in our list of manufactured exports. All of them are derived from power which is coal power. Nay, even our insignificant exports of wool and a few other raw materials are only made by using up coal to transport them. In sum, all British exportation rests upon the combustion of coal, and *all British exportation is tantamount to the exportation of coal.*

Our marvellous shipping supremacy is also based upon coal. As our imports are chiefly bulky foods and materials, while our exports chiefly consist of manufactured articles which are comparatively slight in bulk and weight, value for value, as compared with foodstuffs and materials,

POLITICAL CHART OF THE WORLD

SHOWING THE BRITISH EMPIRE AND STEAMSHIP ROUTES

ON MERCATOR'S PROJECTION

REFERENCE NOTE

British Possessions are coloured Red.

Steamship distances are given in nautical miles

Railways ——— Telegraph Cables ———

Principal Exports are indicated thus *Coffee, Rum, &c.*

Greenwich Time is indicated in upper border of Map

ARCTIC OCEAN

PACIFIC OCEAN

ATLANTIC OCEAN

INDIAN OCEAN

SOUTH AMERICA

NORTH AMERICA

EUROPE

ASIA

AFRICA

AUSTRALIA

GREENLAND

DOMINION OF CANADA

UNITED STATES

MEXICO

BRAZIL

RUSSIAN EMPIRE

CHINESE EMPIRE

SIBERIA

JAPAN

Equator

Tropic of Cancer

Tropic of Capricorn

Longitude West 120 of Greenwich

Longitude East 120 of Greenwich

John Bartholomew & Co. Edinr.

it is clear that, if our outward shipping freights consisted of manufactures only, a large proportion of our ships would have to clear outwards in ballast, earning no freights. If that were the case, our imports would cost us more, since they would have to bear the cost of working the ship both inwards and outwards. This difficulty, happily for our shipowners and happily for our manufacturers, is solved by our coal exports. Coal, a bulky article, furnishes a convenient outward cargo, to atone for the small bulk and weight of our exports of manufactures. Consequently our shipping thrives, our manufacturers enjoy the great advantage of low inward freights on raw material, and our population enjoys food cheapened from the same cause.

Thus the more closely the relation of British coal to British prosperity is examined, the more clearly is cause related to effect. (See table on pp. 62, 63.)

Recent Changes in Industrial Power

We pass from the consideration of the main determining factor of modern industrial success, as exhibited in current statistics, to enquiry as to the progress of coal production in the world in recent times.

In the table on pp. 62, 63 we are able to study the growth of the world's output of coal, which is to say the world's output of industrial power, for rather more than a generation. The statistics are taken partly from the official Coal Tables of the British Board of Trade, and partly from the publications of the United States Bureau of Statistics.

It will be seen that momentous changes have taken place in coal output in the period reviewed.

In 1875 the United Kingdom produced as nearly as possible one-half of the entire world's output of coal. By 1885 the British proportion had fallen to a little less than 40 per cent, although our actual output had increased in the ten years from 133,300,000 tons to 159,400,000 tons.

In the fifteen years 1875–90 the world's output of coal rose from 277,700,000 tons to 502,500,000 tons. Our own output in this period increased by less than 50,000,000 tons; consequently our proportion of the world's output, which was nearly one-half in 1875, fell to little more than one-third in 1890.

By 1900, although the United Kingdom output had grown to 225,200,000 tons, the world's output had grown to 753,800,000 tons, and our proportion fell to less than 30 per cent.

In 1909 the United Kingdom contributed 263,800,000 tons to an aggregate world output of 1,061,300,000 tons. Thus, our proportion of the whole has fallen in a generation from about one-half to about one-fourth.

When the table is examined in detail, the change referred to becomes even more remarkable. It will be seen that it is the great increase of coal output *by two nations, the United States of America and the German Empire*, which chiefly accounts for the relative fall in the industrial position of the United Kingdom.

This point will be clear when the following figures are examined:—

INCREASE OF COAL OUTPUT OF (1) UNITED KINGDOM, (2) THE UNITED STATES, (3) THE GERMAN EMPIRE, AND (4) ALL THE WORLD. 1875–1909

	1875	1909	Actual Increase.	Increase PerCent.
	Mill. Tons	Mill. Tons	Mill. Tons.	
United Kingdom	133	264	131	98
United States ...	47	390	344	736
German Empire	48	214	166	347
All the World	278	1061	784	282

While the world has increased its output by 282 per cent, the United Kingdom has made an increase of 98 per cent. In the same period the United States, the greatest coal country in the world, has increased her output by no less than 736 per cent, and Germany has put on 347 per cent.

The future expansion of American industry was foreseen clearly a generation ago. It was well known to competent observers that the United States possessed resources which must inevitably give her sooner or later a commanding industrial position. What was not foreseen by our fathers was the great growth and brilliant future of Germany. This fact is remarkably illustrated by reference to Jevons's great work alluded to above. Jevons wrote in 1865 (*The Coal Question*, p. 266):—

> "*Prussia, by its somewhat inland position, as well as for other reasons, is incapable of taking any considerable share of the trade of the world*".

Thus a brilliant economist and a trained observer misjudged the future of Germany in a book written not half a century ago. It was not known that Germany, then a "geographical expression", possessed coalfields not inferior, and perhaps superior, to our own, and that by virtue of those coalfields, developed in peace within the iron walls of the greatest army in the world, she was destined to

THE WORLD'S COAL (AND LIGNITE)

(In Millions of

Year.	United Kingdom.	British Possessions	United States.	German Empire †	France	Belgium.	Austria-Hungary. ‡
1875	133·3	2·9	46·7	47·8	16 7	14·8	12·9
1885	159 4	6·6	99·1	72·4	19·2	17·2	20·0
1886	157·5	6·9	100 7	72·5	19·5	17·0	20·4
1887	162·1	7·6	116·0	75·0	21·0	18·1	21·5
1888	169·9	8·2	132·7	80·6	22·2	18·9	23·5
1889	176·9	9·0	126·1	83·6	23·9	19·6	24·9
1890	181·6	9·2	140·9	87·8	25·7	20·0	27·1
1891	185·5	10·8	150·5	92·7	25·6	19·4	28·3
1892	181 8	10·4	160·1	91·0	25·8	19·3	28·5
1893	164·3	11·1	162·8	93·9	25·3	19·1	29·9
1894	188·3	11·9	152·4	97·2	26·9	20·2	30·6
1895	189·7	12·9	172·4	102·3	27·5	20·1	32·1
1896	195·4	14·2	171·4	110·7	28·7	20·9	33·2
1897	202·1	15·0	178·9	118·5	30·3	21·1	35·3
1898	202·1	16·9	196·4	125·9	31·8	21·7	36·8
1899	220·1	18·1	226·5	133·7	32·3	21·7	38·1
1900	225·2	19·6	240·8	147·3	32·9	23·1	38·4
1901	219·0	22·0	261·9	150·6	31·8	21·9	40·1
1902	227·1	24·6	269·3	148·1	29·5	23·5	38·9
1903	230·3	28·9	319·1	159·9	34·4	23·4	39·5
1904	232·4	27·2	314·1	166·8	33·7	22·4	39·8
1905	236·1	28·8	350·8	171·1	35·4	21·5	41·8
1906	251·1	32·9	369·8	190·4	33·6	23·2	44·6
1907	267·8	36·7	428·9	202·4	36·2	23·3	47·1
1908	261·5	39·6	371·3	211·8	36·7	23·2	48·1
1909	263·8	41·2*	390·3	213·9	37·4	23·2	47·9*

* Partly estimated. † About one-third is lignite. ‡ Chiefly lignite.

OUTPUT FROM 1875 TO 1909

AVOIRDUPOIS TONS)

Russia.	Italy.§	Spain.	Sweden.	Japan.	All the World.	U.K. Output expressed as Percentage of World's Output.	Year.
1·7	0·1	0·7	0·1	—	**277·7**	**48·0**	1875
4·2	0·2	0·9	0·2	1·3	**400·7**	**39·7**	1885
4·5	0·2	1·0	0·2	1·4	**401·8**	**39·1**	1886
4·4	0·3	1·0	0·2	1·7	**428·9**	**37·7**	1887
5·1	0·4	1·0	0·2	2·0	**464·7**	**36·5**	1888
6·1	0·4	1·1	0·2	2·4	**474·2**	**37·3**	1889
5·9	0·4	1·1	0·2	2·6	**502·5**	**36·1**	1890
6·1	0·3	1·2	0·2	3·2	**523·8**	**35·4**	1891
6·8	0·3	1·4	0·2	3·2	**528·8**	**34·3**	1892
7·5	0·3	1·5	0·2	3·3	**519·2**	**31·6**	1893
8·5	0·3	1·6	0·2	4·3	**542·4**	**34·7**	1894
8·8	0·3	1·7	0·2	4·8	**572·8**	**33·1**	1895
9·2	0·3	1·8	0·2	5·0	**591·0**	**33·0**	1896
11·0	0·3	2·0	0·2	5·2	**619·9**	**32·6**	1897
12·1	0·3	2·4	0·2	6·7	**653·3**	**30·9**	1898
13·7	0·4	2·6	0·2	6·7	**714·1**	**30·8**	1899
15·9	0·5	2·5	0·2	7·4	**753·8**	**29·8**	1900
16·2	0·4	2·6	0·2	8·9	**775·6**	**28·2**	1901
16·2	0·4	2·7	0·3	9·6	**790·2**	**28·8**	1902
17·5	0·3	2·8	0·3	10·0	**866·4**	**26·5**	1903
19·3	0·4	3·1	0·3	10·6	**870·1**	**26·7**	1904
18·4	0·4	3·4	0·3	11·8	**919·8**	**25·6**	1905
21·4	0·5	3·4	0·3	12·8	**884·0**	**28·4**	1906
25·6	0·4	3·8	0·3	13·7	**1086·2**	**24·6**	1907
24·4	0·5	4·0	0·3	14·6	**1036·0**	**25·2**	1908
24·1	0·5	4·0*	0·3	14·7	**1061·3**	**24·8**	1909

§ Lignite only; Italy has no coal worth mentioning.

build up magnificent industries and an enormous domestic and foreign trade. (See table on p. 65.)

Speaking now, with wider knowledge, we see that in the Age of Coal it was inevitable that the American and German coal resources would build up industrial powers worthy to rank with our own. On p. 65 a table exhibiting the comparative progress of the three great coal nations is printed. It is eloquent of the changes wrought by the coal development of Germany and America.

Turning to other nations, we are struck with the poverty of their coal statistics. The table on pp. 62, 63 gives details for France, Belgium, Austria-Hungary, Russia, Italy, Spain, Sweden, Japan, and for British possessions. Spain, Italy, and Sweden can be dismissed in a few words. Between them they have not enough coal to make an impression of any consequence in the world's coal statistics. Belgium produces little more coal to-day than she did twenty years ago. France has increased her output by but 10,000,000 tons per annum in half a generation. Austria-Hungary can boast of an increase of no more than 15,000,000 tons since 1895, and the larger part of her output is lignite, which, of course, has not nearly the heat value of coal. Russia and Japan have made a greater proportionate progress than the other countries named, but neither country has coal resources to be compared with those of the three leading nations.

The coal output of British possessions exhibits a very large increase, whether considered actually or relatively, and Canada, Australia, and India possess great coal areas. Unfortunately, however, none of them are to be compared with the United States as potential coal producers, and still more unfortunately, none of them can supply power to the United Kingdom, since, for the reason already given, successful modern industry must be carried on near coal because it is so dear to transport. Industry must go to coal; coal cannot go to industry.

An analysis of the coal output of British possessions follows:—

BRITISH EMPIRE COAL OUTPUT: 1875–1909

(*In Millions of Tons*)

Year.	India.	Canada.	Australia	New Zealand.	South Africa.*	Total
1875	0·6	0·9	1·4	—	—	2·9
1885	1·3	1·7	3·1	0·5	—	6·6
1895	3·5	3·1	4·3	0·7	1·3	12·9
1905	8·4	7·7	7·5	1·6	3·6	28·8
†1909	13·5	9·3	11·5	1·9	5·0	41·2

* This, of course, was not wholly Imperial output until 1902.
† Estimated in part.

Certainties and Uncertainties as to Coal Supplies

It cannot be said that the world yet possesses with any degree of certainty adequate information as to the full extent of its available coal resources, and the measure of our uncertainty in this important particular is also the measure of our uncertainty as to the future development of human industry during the Age of Coal. During many years our knowledge has been growing, but there is still a plentiful lack of precise information upon many important coalfields, and much of the information hitherto collected consists of estimates necessarily based upon extremely conjectural elements. On the matter of coal areas, for example, Sir William Siemens in 1877 estimated that Canada had 18,000 sq. miles of coalfields; in 1901 Lozé estimated the Canadian coal area as 65,000 sq. miles; the Canadian official estimate runs to nearly 100,000 sq. miles. And so it is with many other parts of the world. And, of course, the mere extent of coal area is a very different thing from (1) the actual quantity of coal available in any given area, and (2) more important still, *the quantity of coal situated so favourably as to be won at a cost low enough to enable the country possessing it to maintain competitive industry.*

In his report on the Colonial and Foreign Coal Resources, prepared at the request of the Royal Commission on Coal Supplies of 1901, Mr. Bennett H. Brough quotes the following estimate of coal areas made by E. Lozé in 1901 (Report of the Royal Commission on Coal Supplies, Part XI, p. 34):—

AN ESTIMATE OF THE WORLD'S COAL AREAS

Country.	Square Miles
China	232,500
United States	200,000
Canada	65,000
India	35,000
New South Wales	24,000
Russia in Europe	20,000
United Kingdom	12,000
Spain	5,500
Japan	5,000
France	2,500
Austria-Hungary	1,800
Germany	1,700
Belgium	500
Total	605,500

These figures are of small value. For one thing, they are an imperfect measure of coal areas, as is sufficiently illustrated by the fact that the United States claims a coal area of 335,000 sq. miles. It is more important to enquire how much *workable coal* exists in the various countries.

COMPARATIVE PROGRESS OF THE THREE LEADING COAL NATIONS

Annual Average of	Factor Examined.	United Kingdom.	United States.	German Empire.
1875–9	Population	33,600,000	46,400,000	43,100,000
	Coal Production ... ... Tons	133,300,000	52,200,000	49,200,000
	Imports for Home Consumption £	319,500,000	96,200,000	Not known.
	Exports of Own Produce ... £	201,500,000	124,700,000	132,300,000
	Pig-iron produced ... ... Tons	6,400,000	2,200,000	2,000,000
	Shipping (Ocean) ... ... Tons	6,300,000	1,100,000	1,600,000
1885–9	Population	36,600,000	58,700,000	47,300,000
	Coal Production ... ... Tons	165,100,000	76,800,000	114,900,000
	Imports for Home Consumption £	318,800,000	139,300,000	159,900,000
	Exports of Own Produce ... £	226,200,000	146,200,000	151,000,000
	Pig-iron produced ... ... Tons	7,700,000	6,000,000	4,000,000
	Shipping (Ocean) ... ... Tons	7,500,000	1,300,000	1,100,000
	Railways ... ... Miles	19,567	146,252	24,200
1895–9	Population	40,000,000	71,600,000	53,800,000
	Coal Production ... ... Tons	201,900,000	189,100,000	118,200,000
	Imports for Home Consumption £	392,700,000	145,500,000	232,800,000
	Exports of Own Produce ... £	239,600,000	212,600,000	181,300,000
	Pig-iron produced ... ... Tons	8,600,000	10,600,000	6,700,000
	Shipping (Ocean) ... ... Tons	9,000,000	800,000	1,600,000
	Railways ... ... Miles	21,449	189,072	29,261
1905–8	Population	43,900,000	85,100,000	61,900,000
	Coal Production ... ... Tons	254,100,000	380,200,000	193,900,000
	Imports for Home Consumption £	519,300,000	253,500,000	387,900,000
	Exports of Own Produce ... £	377,100,000	359,300,000	311,500,000
	Pig-iron produced ... ... Tons	9,800,000	22,500,000	11,800,000
	Shipping (Ocean) ... ... Tons	11,200,000	900,000	2,700,000
	Railways ... ... Miles	23,056	230,969	34,443

On this head the following figures were published in 1893 by R. Nasse, who worked out the estimates for the Prussian Government:—

A German Estimate of Available Coal (Nasse)

Country	Tons
United States	684,000,000,000
United Kingdom	198,000,000,000
Germany	112,000,000,000
France	18,000,000,000
Austria-Hungary	17,000,000,000
Belgium	15,000,000,000

These figures are certainly more valuable than a mere statement as to areas; nevertheless, they cannot be regarded as more than the roughest approximations to the truth. In the case of Germany, as is pointed out by Mr. A. W. Flux in his revised edition of Jevons's *Coal Question*, Simmersbach calculated in 1904 that Germany possesses 415,300,000,000 tons of available coal. Apparently this exceedingly handsome figure includes coal at depths which have not yet been mined in practice.

As to the British estimate in Herr Nasse's table, viz. 198,000,000,000 tons, it is not borne out by the estimates of the 1901 Coal Commission, whose Report (Cd. 2353, pp. 2 and 3) gives the following figures:—

UNITED KINGDOM COAL: ESTIMATE OF THE ROYAL COMMISSION ON COAL SUPPLIES, 1901.

	Tons.
In Proved Coalfields:	
Under 4000 ft. deep ...	100,900,000,000
Over 4000 ft. deep ...	5,200,000,000
In Unproved Coalfields:	
Under 4000 ft. deep ...	39,500,000,000
Total ...	145,600,000,000

Sufficient has been said to show how considerable an element of uncertainty exists as to the comparative coal resources of the nations, and it is impossible not to regret that the Coal Commission of 1901 did not think it worth while to employ qualified persons to make original investigations, in order to secure estimates which, if necessarily imperfect, should at least be more justly comparable than the figures printed above.

Amidst all the uncertainty, however, it appears to be beyond doubt that, as practical experience of coal-getting would indicate, Britain, America, and Germany amongst the white nations are supremely favoured in point of *coal available at a cost low enough to sustain competitive industry.*

Apart from the three leaders, it appears that China has enormous undeveloped resources. Indeed, China is the dark horse of the coal problem. It has been estimated by F. von Richthofen that the Chinese coalfields are not only greater in area than those of the United States, but that they contain some 1,200,000,000,000 tons of coal and anthracite. Mr. Brough's report tells us:—

"In the north-east of China the average thickness of the principal coalbed of each of the fields is, according to N. F. Drake, for Kaiping 18 ft., for Wangping 35 feet, for Fangshang 20 ft, for Pingting 20 ft., and for Tse Chou 22 ft. These fields contain 350,000,000,000 tons of coal. . . . All the world's coalfields appear to be surpassed by those of Shansi. Over an area of 13,500 sq. miles there are several almost horizontal seams of anthracite, including a persistent main seam six to nine yards in thickness"

A considerable deduction from these extraordinary estimates would leave China the most favoured coal nation in the world. China has for many centuries known of her coal and used it for fuel. Marco Polo, writing early in the thirteenth century, says:—

"Throughout this province (Cathay) there is found a sort of black stone, which they dig out of the mountains, where it runs in veins. When lighted, it burns like charcoal, and retains the fire much better than wood; insomuch that it may be preserved during the night, and in the morning be found still burning. These stones do not flame, excepting a little when first lighted, but during their ignition give out a considerable heat. It is true there is no scarcity of wood in the country, but the multitude of inhabitants is so immense, and their stoves and baths, which they are continually heating, so numerous, that the quantity could not supply the demand; for there is no person who does not frequent the warm bath at least three times in the week, and during the winter daily, if it is in their power. Every man of rank or wealth has one in his house for his own use; and the stock of wood must soon prove inadequate to such consumption; whereas these stones may be had in the greatest abundance, and at a cheap rate."

China is now awakening to the meaning of coal as a source of power, and therefore of industrial greatness, and the day may not be far distant when tens of millions of Chinese will be working in machine industries based upon coal. How far the balance of East and West may thus

be altered is an interesting subject for speculation.

It cannot be too strongly insisted upon that not the quantity of coal available so much as the cost of getting the coal is of the essence of the problem when we look ahead and endeavour to form an intelligent conception of what the future is likely to hold for British trade and industry. As Mr. D. A. Thomas puts it in his invaluable paper on "Coal Exports" (*Royal Statistical Society's Journal*, 1903): "Our present pre-eminence depends upon cheap fuel; the first symptom of declining supremacy will be the higher normal cost of our own production". The following prices are taken from the Board of Trade's "Coal Tables":—

AVERAGE PRICE OF COAL AT THE PIT'S MOUTH

Year	United Kingdom.	United States	Germany.*
	s. d.	*s. d.*	*s. d.*
1885	5 2	6 8	5 2
1890	8 3	5 3	7 8
1895	6 0	4 9	7 1
1900	10 10	5 4	8 10
1905	6 11	5 8	8 8
1909	8 1	6 1	10 2

*Not including lignite

As it stands, this table is sufficiently favourable to the United States. In 1909 the average price of coal in America was actually less than in 1885, whereas in Britain and in Germany alike the price was much higher at the later than at the earlier date. But the inclusion in the American figure of the price of a great deal of anthracite raises the average above what it would be if we compared for America and Britain bituminous coal only. It is plain, therefore, that of the three coal leaders America has pride of place, and nothing but her artificially appreciated cost of manufacturing, and her lack of mercantile marine, has prevented her from becoming by this time the greatest export manufacturing nation and our most severe competitor.

While in Europe the cost of coal is rising with increased difficulties of working deeper supplies, America has still an enormous quantity of surface coal easily won, even with higher than European wages, at very low costs. In addition, the United States is the greatest copper country, the greatest iron country, the greatest lead country, the greatest petroleum country, and the greatest cotton country. A general idea of the stern character of American competition, if exercised economically, may be gathered from the following table, which compares certain British and American natural resources for a recent year (1906):—

SOME NATURAL RESOURCES OF BRITAIN AND AMERICA

Production of	United Kingdom	United States
Coal (tons)	251,000,000	370,000,000
Iron ore (tons)	15,500,000	43,000,000
Copper (tons)	760	416,000
Silver (oz.)	3,000	56,500,000
Petroleum (barrels) ...	nil	126,500,000
Natural gas (dollars) ..	nil	46,900,000
Wheat (bushels) ..	60,800,000	735,000,000
Cotton (bales)	nil	13,300,000
Wool (lb.)	130,000,000	298,000,000

It is, of course, the unparalleled natural resources of the United States, and in particular her coal, which has attracted an ever-increasing tide of immigrants to her shores, and given her a population within measurable distance of that of the United Kingdom and Germany put together.

It should be remembered that the development of the world's greatest coal country will be considerably aided in a few years' time by the completion of the Panama Canal by the United States Government. About 1916 this great engineering feat will be at last completed. In some degree the Panama Canal will be of assistance to all nations, but the advantages to the United States will obviously be very great, both for commercial and naval purposes. It will practically make one her fine Pacific and Atlantic seaboards, and give her an indubitable advantage in trading with the great and growing Republics of South America. With Australasia, Japan, China, and Manchuria, American communications will be vastly improved, and in connection with many important trade routes New York will come to have a considerable advantage over Liverpool by reason of the existence of the Panama route. It is true that America's policy of restriction has driven her ships from the ocean, so that at present there is some ground for saying that the Panama Canal is being built more for the advantage of other nations than for that of the United States. It is impossible to believe, however, that American statesmen will forever be content to see American commerce carried in British vessels, and sooner or later a wiser commercial policy will see the building up by America of a vast mercantile marine whose operations will be very greatly facilitated by the work being done at Panama. In that day our mercantile marine, which at present holds an incredible degree of supremacy, will have to face a severe and natural competition.

Germany, less fortunate than the United States, is yet, as we have seen, one of the nations supremely equipped with native coal. In the period examined in the tables on p. 62, 63 she has

developed because her statesmen won for her, after centuries of unrest, the opportunity of development. A century ago, what is now the German Empire was a certain area of Central Europe ruled by some two hundred separate governments, each with its own fiscal barrier, coinage, and system of weights and measures. Not until 1833 was a Customs Union formed which broke down part of the internal restrictions upon trade. For long after, coinage and weights and measures remained unreformed, and it was not until 1868 that internal freedom of trade became actually effective. The great ports of Hamburg, Bremen, and Lübeck joined the Customs Union respectively in 1866, 1888, and 1889.

The welding together of the German States by Bismarck brought the end of a period of conflict which had lasted for some nine generations. It is difficult to realize, but it is strictly true, that during the first half of the nineteenth century Germany had declined in commerce and industry as compared with the position she had won before the desolating Thirty Years' War began in 1618. The prosperity of the Hanse towns three centuries ago was sufficient proof that the German peoples needed but opportunity to attain to wealth and prosperity. The opportunity came again, at length, with the formation of the German Empire; and with the securing of the frontiers against the possibility of invasion the Germans soon showed what they were made of Adding devotion to science to the great natural gift of a power supply, they have achieved so much in a single generation that it is doubtful whether there is any parallel for their accomplishment, when all the circumstances of the case are taken into consideration. But not all German science or German thoroughness could have made modern Germany if Nature had not bestowed upon her the gift of one of the great coal supplies of the world.

It will be apparent from the consideration of the figures given above for the comparative prices of coal that Germany, like Britain, is greatly inferior to America in point of competitive power, given development under equal conditions. As to comparisons between Britain and Germany, it is impossible at present to say with which of the two countries the advantage of cheap production will lie after the lapse of a generation or of a longer period. The material does not exist to enable us now to decide whether in, say, the middle of the twentieth century, if coal is still the unsupplanted source of industrial power, Britain or Germany will hold economic advantage. We have to face the fact that there is at any rate no reason to believe that German power supplies are inferior to our own.

With regard to America, the lapse of time may possibly bring to a nearer level the comparative cost of coal-getting; and if that should prove to be the case, the fact will tend to set off the advantage gained from the wiser commercial policy which America may be expected sooner or later to adopt.

The development of the great coal resources of China would bring into play in the world an economic factor of enormous importance. The establishment near easily-won coal in China of large-scale machine industry would have a profound effect upon the world's commerce, and reduce the rate of expansion of the foreign trade of existing export nations. On the other hand, it should be remembered that the development of any new coal supplies in the world makes for the preservation of the supplies already being worked.

Will Coal be Supplanted?

But it is not only necessary to enquire what changes may take place in the relative advantages of the coal-owning nations. We have seen that already in the Age of Coal our relative position in the world has changed considerably, and that it may change even more to our disadvantage during the continuance of the Age of Coal Our speculations as to the future must, however, take cognizance of the fact that, long before the best supplies of the world's coal have been creamed, the importance of coal may pass through the application of one or more new sources of power supply

We now know of coal substitutes, but these do not appear at present to promise more than fractional assistance to the world of work. The chief of them is water power, which has been aptly termed "White Coal". In many countries water power has been, or can be, effectively developed for the production of very cheap power, cheaper often than that derived from coal itself. In America and in Europe important plants have been erected to utilize the enormous forces of water power at Niagara, in the Alps, in the Apennines, and other places. The great Victoria Falls on the Zambesi may come to be the centre of a fine manufacturing district when their power is used economically. Italy finds in her numerous mountain streams compensation for her coal-less condition. In the north of Europe Scandinavia is well found in water power, which has been used amongst other things for the solidification of the atmospheric nitrogen. Germany has in the Bavarian Alps a rich quarry of water power which will presently give the greatest assistance to the

manufacturers of South Germany. Unfortunately for the United Kingdom, we are amongst the nations poorest in water power, and Professor Forbes estimated for the 1901 Coal Commission that the total saving in coal which might be effected by the use of all British water power does not exceed 1,200,000 tons per annum, a negligible figure.

Other coal substitutes now in use are oil and natural gas, but in these again we are lamentably deficient. Petroleum production in 1909 was as follows:—

WORLD'S PETROLEUM PRODUCTION IN 1909

Country	Imperial Gallons.
United States	6,323,000,000
Russia	2,254,000,000
Austria (1908)	442,000,000
Roumania	356,000,000
Dutch East Indies (1908)	286,000,000
India (1908)	177,000,000
Japan	65,000,000
Germany	36,000,000
Canada	18,000,000

The mineral oil resources of the world are being rapidly developed, but it does not appear that they can ever supply more than a very small percentage of the power requirements of the world.

Natural gas is found in considerable areas, notably in the United States. It is a small feature in the world of power, which is fortunate for us in a competitive sense, as we have little or none of it.

Wider speculations have been made from time to time with regard to the direct utilization of the sun's heat, and of the tides. As to the latter, engineers are not increasingly sanguine; and as to the former, if science solves the problem our sunless isles would improbably benefit. Indeed, as was long ago pointed out by Jevons, it is improbable that a new source of power, if discovered, and of such a character as to disthrone coal, would be bestowed upon the United Kingdom in such manner as to give us the relative advantage which arises from our being one of the few great coal nations.

It has been observed that the real wealth of the world is its energy, and at the beginning of the twentieth century the discovery of radium opened up for science new possibilities with regard to energy of an astounding character. It now appears that radium undergoes a slow process of transmutation, and in that process liberates abounding and miraculous stores of energy. It has been suggested by Professor Soddy (*The Interpretation of Radium*) that the discovery of radium and its interpretation possibly sets us on the threshold of discoveries leading to the control of powers undreamed of. We are even entitled to hope that the transmutation of the elements may cease to be a dream of the alchemist, and that Man may rise to the control and use of the enormous resources of energy stored in the world's material. If Science thus endowers Man, such plenty will ensue for the world's peoples that such things or expressions as "trade competition" or "relative prosperity" will cease to have meaning. Here and now, while we may legitimately cherish almost illimitable hopes as to Man's future, we can only build upon the solid foundation of such practically workable stores of energy as we know of, and as we have seen very clearly, that solid foundation is Coal.

Of the Wiser Use of Coal

Coal being the British sheet anchor, it behoves us, in whose hands is the opportunity to make wise use of coal, to consider very seriously whether more economical use cannot be made than at present of the stores of energy which Nature has given. According to evidence taken by the 1901 Coal Commission, our collieries themselves waste an enormous amount of coal, and the writer has himself seen in use colliery engines of a most wasteful character. It is undoubtedly true of both our industrial and domestic use of coal that it is supremely wasteful. Not more than 10 per cent of the energy produced by burning coal is usefully consumed. That is to say, of the 200,000,000 tons of coal which we now consume in this country every year, we put to economic use the power contained in only 20,000,000 tons. Obviously, every improvement in coal economy is something done to preserve the relative advantage of the United Kingdom as a coal nation—something done to put off the possible day when, not through exhaustion of supplies, *but through greater relative cost of supplies*, our position will be endangered. We cannot, of course, hope ever to use 100 per cent of the energy in coal, but we may and we must seek means to use a larger proportion of it. If we could use 25 to 50 per cent, the consequent fall in coal consumption would mean much to the future of Britain, and much to happiness and prosperity in the present.

Surveying our country and its coal mines, so distinguished an engineer as Mr. S. Z. de Ferranti, a President of the Institution of Electrical Engineers, gives us a vision of economy and efficiency which, based as it is upon knowledge, is worth the serious attention of the nation. Mr. de Ferranti's view is that a proper coal conservation can only be secured by the conversion of coal into electricity at a hundred economic centres, and the

distribution of power from those centres throughout the country in the form of electricity. This would mean, of course, the end of the coal-fed local furnace. Power derived from coal would be "laid on" throughout the land, smoke stacks and furnaces would disappear, a general cleanliness would prevail, labour and health as well as coal would be conserved, and the word "plenty" would take a new significance. Where now but about 1 per cent of our coal is used up for the production of electric energy, the whole of our coal would be transmuted into electricity before being used finally for driving factory machinery, for agricultural purposes, for communal and domestic lighting and heating, and for the reduction of housework to child's play.

Basing himself upon the 1903 consumption of coal, apart from that of gas companies and coasting steamers, dealt with in the report of the 1901 Coal Commission, Mr. de Ferranti estimates that if, instead of using this coal as coal, we were to convert it into electricity, we should use, instead of the 150,000,000 tons of 1903, 60,000,000 tons. This coal, turned into electricity, would produce 131,400,000,000 Board of Trade units, and this electricity, allowing for transmission and conversion into light, heat, and mechanical power, would do everything now done by the 150,000,000 tons of coal.

In order to produce the 131,400,000,000 units (calculating for a load factor of 60 per cent arising from the universal use of electricity), machinery of the normal capacity of 25,000,000 kw would be required. The projected machine for this purpose is the steam-gas turbine, in which steam is used at a high temperature in the state of gas, giving the remarkably high efficiency of 25 per cent. The machinery would be divided between one hundred generating stations, each of the capacity of 250,000 kw. These generating stations would be either at the coal mines, or at economic centres determined by cost of transport of coal. Thus the economy of labour in coal transport would alone be very great.

The capital cost of the generating works is put down at £175,000,000, and the cost of distribution to local power stations £325,000,000, making the total cost of the scheme, including all expenses up to the point of delivering the electric supply to the consumer, £500,000,000. Considered in relation to the enormous amount of power controlled, this cannot be considered an excessive sum. Mr. de Ferranti believes that with such a plant electric power could be supplied throughout the country at as low a price as ½*d.* per Board of Trade unit. With such a supply, every department of labour, from agriculture to cotton spinning, and from iron smelting to domestic cookery, would be so greatly facilitated and cheapened as entirely to change our conceptions of the conditions of work.

As a by-product of this all-electric scheme, there would be produced 3,000,000 tons of sulphate of ammonia or its nitrogen equivalent. This would give an annual supply of manure of 143 lb. per acre over the whole of the 46,750,000 ac. now under cultivation, and enable us to be independent of oversea supplies of such foods as can be raised in our climate. Moreover, with such cheap current, known processes to turn air into manure (i.e. the fixation of the atmospheric nitrogen), which can now only be economically prosecuted where there is abundant water power, could be used in the United Kingdom.

Such is the nature of a plan which may come to fruition in the near future, and which makes not so great a call upon the imagination as the possibility of wireless telegraphy would have demanded twenty years ago. We have the prospect of prolonging our coal supplies indefinitely, and also of postponing indefinitely the period at which the relative cost of coal would seriously endanger the future of British trade and industry.

Education and the Industry of the Future

If the distribution of coal is a matter beyond human control, and if, therefore, there are uncertainties with regard to the future of British industry, the development of the national personnel is for us to decide, and there is no uncertainty whatever with regard to the lines upon which the industry of the future will be conducted. The day of rough-and-ready methods has passed, and rule of thumb now endeavours in vain to hold its own against scientific method. Writing in 1847, Porter, in his well-known *Progress of the Nation*, reproached his fellow countrymen with their lack of education. In 1866, four years before the passing of our Elementary Education Act, Matthew Arnold wrote that "the school system of Germany, in its completeness and carefulness, is such as to excite the foreigner's admiration". The educational advantage which the Germans possessed a generation ago has undoubtedly been of immense aid to them in their remarkable development. To-day, Britain's educational handicap is not less than it was. There has been improvement of late years, but it is still true that for the great mass of our people education merely means ability to write and read, and the acquisition of a smattering of arithmetical rules and of dubious scraps of information labelled "history" and "geography".

For the most part, our children leave school untrained of mind, of body, of eye, and of hand.

The facts as to the inadequacy of schooling in reference to the age factor are exhibited in the following table:—

Boys and Girls (England and Wales): 1906–7

Age	Population of Age Named	At School.		Not at School	
		Number	Per Cent.	Number.	Per Cent
12	687,300	672,876	97·9	14,424	2·1
13	690,300	534,429	77·4	155,871	22·6
14	691,000	248,050	35·9	442,950	64·1
15	682,100	158,717	23·3	523,383	76·7
16	649,200	117,184	18·0	532,016	82·0
17	664,900	87,268	13·1	577,632	86·9

The "At School" figures in this table, which is derived from statistics prepared by a special committee appointed by the Board of Education, refer to all sorts of schools except Sunday schools. The table includes both day and evening schools, and all classes of children, rich and poor.

It will be seen that between twelve and thirteen years of age the number of children at school falls by over 138,000, and that at fourteen it drops again by nearly 300,000. Even so, the figure is only sustained by the well-to-do children included in the statistics. As far as elementary schools are concerned, the decline of scholars between thirteen and fourteen years of age is from 408,000 to 68,000. At thirteen years of age, nearly the whole of the children of the country belonging to the working classes are withdrawn from school That is to say, discipline and systematic training are withdrawn from the national material at the period of life when they are most needed, and when physiologically the youthful mind is best fitted to profit by instruction. This is the more deplorable because of the decay of the apprenticeship system and the multiplication through machinery of precarious and uneducative employments.

In Germany compulsory education is now continued, in almost every part of the Empire, up to about seventeen years of age. To evening school, and in some cases, what is better, to day school, the child is compelled to come in order to continue its training and to bridge over the period of adolescence. General education is combined with technical training, to the making of citizens worthy to take their place in the life and activities of a great Empire.

We certainly cannot afford to endure much longer the educational handicap. The controversies of recent years as to the place of religious instruction must be brought to an end, and the attention of Parliament directed to the non-controversial business of raising the national standard of education.

Nor can it be said that the educational needs of the country are confined to the working classes. All classes need a scientific training if British industry is to continue to flourish in a world the pace of whose progress accelerates every year. Compulsory Greek must give way to compulsory Science, and a thorough grounding in physics, chemistry, biology, and geology be regarded as an "elementary" education, as in truth it is. The acquisition of such knowledge is a delight to children, and it is the only path to the intelligent general use of national resources by the nation. It need hardly be said that it is not contended here that studies in languages, in literature, in citizenship, and in the arts, should not find their place; the contention is that study of science, which means the study of the knowledge of Nature, should occupy the greater part of the time devoted to systematic education. Man's life on earth is a struggle to maintain himself against the forces of Nature, and it is a struggle which will not be attended with a greater measure of success until not merely a few of us, but our entire population, have become the inheritors, through a scientific education, of the magnificent stores of knowledge which have been won by the living and the dead.

THE
COMMERCIAL FUTURE OF BRITAIN

By the Right Hon. LORD FURNESS

Head of the Furness Line

Serious concern for the commercial future of our country impels me to write upon what, for rather cogent reasons, is a difficult topic. The propaganda in favour of Tariff Reform has developed a partisan spirit so high as to render the calm, deliberate, and unbiased consideration of our national trade position almost hopeless Nor am I unprepared for the criticism that my own position as a convinced Free Trader does not particularly qualify me for the task. Yet the argument as between Free Trade and a so-called scientific tariff does not cover the whole ground, nor indeed any large portion of it.

German Determination

At the moment Germany is our great bugbear; she has free access to the British market, whilst we are supposed to be beating our wings against her tariff walls. But do not let us deceive ourselves into thinking that Germany is out for pleasure. Tariffs or no tariffs, the German people are after trade--anywhere and everywhere; they are determined to have it; nothing will stay them. You may meet them wherever you go the world over—penetrating, forceful, keen to adapt their wares to the requirements of their customers, bringing all things to bear upon the situation that may in any way affect it favourably. And at home they are backed up energetically with all that science and organization and highly trained intelligence can give. The whole of the factors that go to success are bent to the task, and they are succeeding, and succeeding against us in places where both have an equal tariff to face

It is a decade now since His Majesty the King uttered his warning note of "Wake up, England!" That cry has been echoed and re-echoed. When are we going to wake up?

This is no armchair business with me. I am not an old man, but I have been going about the world for forty years, and still go, in order to bring orders home; and I state deliberately that unless we apply ourselves assiduously and nationally to develop our commercial methods on the highest possible plane, we cannot hope to hold our own—it would be a natural impossibility.

British Contempt for Trade

I cannot resist the feeling that we are half-hearted about it all. We say "Wake up, England!" and we mean that some other body is to wake up. The idea of world-wide trade dominion is not an enthusiasm with us. We destine our sons for the Services, or the Church, or the Professions, and in our hearts we despise trade and look down upon it, and in the main upon those who follow it. The mediæval attitude lingers amongst us. We are loath to part with it. We may have grown rich by commerce, we may watch the national trade returns with absorbed interest, but for an overmastering and consuming passion to capture trade on scientific lines one has to look elsewhere.

America, Germany, Japan, to mention three

only, are in the field, and finely equipped; and if England is to retain a leading hand in the game, then Britain's best blood, her highest intelligence, the skilled aid of her official departments and every modern auxiliary must be directed unceasingly and unerringly to the desired end.

Here in Britain we debar a man, whilst engaged in commerce, from holding office in Governments; we discuss in the mildest way the desirability of establishing a Ministry of Commerce, and in general we are "muddling along" in the good old British fashion.

The Consular Service

Yet in Germany they are not content to muddle along, even governmentally. Reuter's news from Berlin, under date January 28, 1911, is that "A most important change in the economic education of candidates for the Consular Service, in order thoroughly to qualify them to deal with the rapidly increasing commerce of the German Empire, has been decided in the course of a conference of officials and leading manufacturers, commercial men and shipowners, which has been sitting at the Foreign Office throughout the week. In future, candidates must possess a practical knowledge of commerce, industry, and shipping before being admitted into the service."

Trade Interests a National Concern

This is but an instance of the concentration of purpose that is making of our German cousins competitors so formidable. The matter is not one that requires us to be concerned for Germany or German methods or German systems. Our concern should be for our own neglect of any real method —our disregard of any scientific and highly organized system, our lack of any purposeful and insistent campaign. Nevertheless, I do not offer any specific remedy nor advocate any particular line of advance; my sole purpose is to arouse serious attention to that which must in the near future, as I am convinced, press itself with clamant force upon the nation unless active steps are taken whereby our undoubted deficiencies in these respects may come to be remedied.

My principal contention is that something of the energy we devote as a nation to the defence of our hearths and homes should be directed, and quite as nationally, to the preservation and extension of our commerce; that our trade interests, so far from being the private concern of our merchants, are so bound up with the general well-being as to call for the care of the State itself, to call for the undivided attention of a principal Minister, and to be so elevated in dignity as to make a call upon our patriotism equally insistent with that which impels the most highly placed of our sons to take their part in maintaining and enhancing the other and older branches of our national defence.

Public Concern in this Subject

Considerable public interest has been aroused in this subject, and it is greatly to the good that concern for the industrial and commercial welfare of our country is so widespread, since the uncomfortable feelings we experience to-day may be our best hope for the morrow. A disposition in certain quarters to bracket this question with the fiscal problem is to be deprecated, inasmuch as the whole matter would thereby be thrown into the cockpit of party politics; and for my present purpose it is hardly material whether trade be carried on under a tariff or through the medium of the open market—the shortcomings that have been pointed out by myself and others would be just as glaring, the need for a remedy equally urgent, under either.

Tariffs only Artificial Aids

The marvellous extension of German commerce witnessed in recent years is not due either wholly or in any considerable degree to her operations in the open markets of Britain, elsewhere she is met by the identical tariff wall which we ourselves have to face. So that obviously the success of Germany in building up a world-wide trade is not a question of fiscal arrangements, and the strongest advocates of taxed imports would hardly claim the tariff system as being anything more than an artificial aid to business. In any event, if we are not prepared to go out after trade, to seek for it upon scientific and well-organized lines, we can scarcely regard our neighbours' tariffs as a hindrance. One of the main causes of our disability, and one that still operates, though in less degree than formerly—I mean our disregard of technical education—was proclaimed aloud by Lord Rosebery long before Tariff Reform had claimed the allegiance of its great protagonist. His lordship at that time was regarded as a sort of prophet crying in the wilderness. Early pre-eminent in manufacture, accustomed for a long period to having the peoples of the world come to us for our goods, we were ill-disposed to be disturbed about a new order of things, involving on the one hand a more acute search into origins and beginnings than we had ourselves attempted, and on the other hand a pushing out among the peoples of the world in

order to achieve business that had hitherto come to us with the *minimum* of trouble or effort.

Riches and Vested Interests opposed to Energy

It may be that this old country of ours is too rich for great effort, and that any attempt to break away on a new line is hampered at all points by vested interests. Nevertheless, we ought to realize that the accumulated wealth of our country means little or nothing to the man whose well-being depends upon the receipt of a regular weekly wage. The important thing for the bulk of our countrymen is that there shall be work for the workers, and I am convinced that this aspect of the case will be forced upon us in a manner not altogether agreeable unless some strong move is made in the direction of restoring the balance as between capital employed merely for its dividend increment and capital so employed as to produce concurrently with the proper interest for its owner good employment for his fellow countrymen. Of the premisses upon which Tariff Reform is founded this is the argument which makes the strongest appeal; yet Tariff Reform as a remedy would, to my mind, be entirely illusory. To resolve that, because we are hard put to it abroad, we will shut ourselves in at home is hardly a virile policy, and certainly fatal to progress.

Admitting the defect, if we are true to our heritage as Englishmen, we shall rather determine to conquer it, and ourselves grow stronger in the process. In some ways a beginning has been made. Slowly we are realizing the need for scientific research—the value of pure research ere the stage of applying result is reached. The actual work hitherto done in the way of technical education is only now dimly making itself felt, and too many of us still regard it as an unnecessary addition to the impost of rates and taxes we are called upon to bear—we are so concerned for immediate results. But the whole thing needs to be gathered up, and toned up as well.

Government Aid to Commerce

International trade has got beyond the scope of the merchant as an individual entirely concerned with his own private transactions with other private traders. And just as production on the large scale demanded by present-day needs and processes has gone beyond the capital of the single individual, or even as modern methods of manufacture have displaced the old hand worker, so the commercial intercourse of nations needs to be handled in such wise that those who conduct it shall derive a valuable impetus to their operations from the sympathetic and well-directed aid of the Government to which they own allegiance—a very different thing from Government interference, from which all traders devoutly pray to be delivered.

The assistance given to British houses in connection with the last exhibition held at Brussels, and the admitted value and success of that experiment, is a small instance of what may be achieved on the lines I am endeavouring, however feebly, to indicate.

A "Chartered Institute of International Commerce"

We need some genius of organization, some heaven-sent Minister of Commerce, to gather up into an effective whole the sound, though rather blind, efforts that are going on around us in a variety of directions, to the end that our country may reach to higher attainment in the progress of the world. Technical education in more liberal measure, scientific research generously encouraged—these on the home side would yield abundant returns. Abroad our consular service needs a wholly new development from the commercial standpoint. And between home and abroad there is a great gap to be filled in the training and equipment of men as "business bringers"—demanding almost a new profession. We have chartered institutes for all sorts of professions and *quasi*-professions, conferring a *status* that attracts men of good all-round education. Why not a Chartered Institute of International Commerce?

Business Education

Business education as a whole has most inadequate attention and is very limited in operation, and is confined mainly to the preparation of those who are feeling their way at the threshold. Here alone there is need for wise national effort in making the lowlier ways of commerce more readily accessible; but when one comes to consider the equipment of youth for the prosecution of commercial transactions of a high order there is a distinct blank. It is left entirely to individual initiative how best to set about achieving the object in view; what languages to acquire, and how best to acquire them in order that one may be able to operate independently in any business affair; the commercial methods of our rivals, their banking arrangements and financial systems; the distribution of natural resources; methods of transit and the course of trade generally; and so on and on over the whole ground. A school of men graduated upon some such method would be invaluable

to the trade and traders of this country. Given that it were established, we should hear little or nothing of our insular methods in commerce; our wares would be put before the peoples of the world in a manner that would meet with their ready apprehension, and it would be an easy matter for any manufacturer to acquaint himself of and to comply with the exact desires and wishes of his customers.

A Serious National Object

These things are done to-day in some few individual cases and at great cost to the individuals concerned, whereas the establishment of such a service on professional lines would facilitate trade intercourse, promote our manufactures, and provide a highly remunerative profession for many of our young men. Possibly the educationist's ideal of a "straight road from the elementary school to the university" is being taken too literally; we are not all bound for the university, and there are other roads that require considerable straightenings!

I am hopeful, because we are beginning to do things nationally. We have our Roads Boards; agriculture is being helped as distinguished from being coddled; the Port of London is to emerge; something is going forward in the way of afforestation. And this anxiety concerning the preservation of our great international trade, if rather dumb, is not the less real: manifesting itself here to-day, there to-morrow, it is too deeply felt and too general to do anything but develop into an irresistible demand that the whole commercial activities and welfare of our people shall become a principal interest of the State. We may do worse than hasten the day. Possibly our Chambers of Commerce will help to force the pace; they of all people ought to realize the need.

PART III

THE LAW OF COMMERCE AND BUSINESS

INTRODUCTION

The Law of Commerce and Business has been taken for the title of this Part, as it includes more than is ordinarily termed Commercial Law. On the other hand, some most important subjects in Commercial Law have been dealt with in other Parts of the Book, under Finance, Carriage, and Shipping. Throughout this work it has been attempted to deal with law and business side by side, although the essential legal matter in any book on Commerce is so considerable that it must take a large portion of separate space.

It is in no sense pretended that the law as here treated in the interests of the business man is such as to enable him to dispense with the services of the lawyer. Any such attempt would be sure to be futile, as the worst of all pretensions is to induce anyone to believe that some or even a degree of knowledge can justify neglect of experienced professional advice and assistance. It is, however, hoped that an ample and practical discussion of the legal side of commercial transactions may often fortify a business man in his position, and help him to avoid some of the pitfalls which may be due to ignorance or want of appreciation of broad legal principles. It is believed that the legal treatment here adopted is fuller than has been the case in many other practical publications. This is justified by the undoubtedly prominent place which law holds in the business life of the day in domestic and foreign transactions, and not less warranted by the fact that mercantile law is the outcome very largely of rules which have been laid down by mercantile communities. Commercial law has followed the rules of business, of convenience, and commercial morality, as approved by all trading nationalities.

Some study of commercial law is well worth the business man's attention. Apart from any actual necessity he may have for seeking the aid of any Court or legal process, there is much in it to attract him. In its origin the custom of merchants, it has been moulded by judges largely indebted to the practical experience of business men, and its latest statutes have been passed in deference to the demands of the commercial world. It is still possible to say that "the law merchant is a system of equity, founded on the rules of equity, and governed in all its parts by plain justice and good faith"—Mr. Justice Buller: *Master v. Miller* (1791). Though much of the law has under happy inspiration been codified, much in all transactions must still be left outside the law, to what another eminent judge was fond of calling "the commercial conscience".

It is instructive to remember that commercial law had its rise in the law of nations, in the commercial customs of very early trading communities, in some cases in early

codes of shipping and marine insurance law, in the actual transactions during the Middle Ages at international fairs, and the peculiar jurisdiction of local courts where laymen often administered justice as between merchants.

According to Mr. J. W. Smith, in his introduction to *Mercantile Law*, there are three periods: the first, when mercantile law, so far as it existed, was administered in special Courts, and for the purpose of settling the disputes of a special class, subject to peculiar duties and possessed of peculiar rights; the second, in which mercantile law chiefly consisted of a body of customs, to be proved, in case of doubt, as facts, and binding only upon a special class; and the third, in which these customs are incorporated in the general law, and are binding upon all, whether merchants or not. Adopting another division, the periods of commercial law may be said to be to the time of Chief Justice Coke, from Coke to Mansfield, and from Mansfield to the present age. The history of the law merchant extends to a time much earlier than that of Coke; especially in what were known as the towns of the Staple and in other local courts can it be clearly traced in respect to general trading, bills of exchange, and shipping law.

There followed a time, however, when mercantile questions were so ignorantly treated in the ordinary Courts, and according to no general rules, that merchants, whenever possible, settled their disputes by arbitration amongst themselves.

To Lord Mansfield the chief credit is due of the consolidation of our commercial law. He may be truly said, in the words of a judge already quoted, to be "the founder of the commercial law of this country". He became Chief Justice in 1756, and at once applied himself to removing some of the absurder technicalities of the general law and procedure. He declared that he never passed his time more satisfactorily or agreeably than in trying mercantile causes by a special jury of merchants at the Guildhall. In this way Lord Mansfield taught himself how to mould the law in accordance with the requirements of commerce and manufacture, as they were then expanding.

In later times the ordinary Courts again suffered by their technical procedure and want of special commercial knowledge, and lost the confidence of commercial men; until within recent years the establishment of a Commercial Court, presided over by a judge of ripe commercial experience, at length restored that confidence.

The mercantile law is still, therefore, due to customs, cases, legal maxims, not a little to textbook writers, who have often been judges, and in an increasing and now preponderating degree to statute. But as codification proceeds, the textbook writers have sometimes been able to be the codifiers. The recent practice of codifying definite branches of commercial law, which began with Bills of Exchange in 1882, has been continued with great success, and undoubted advantage to the layman, and, it is to be hoped, will be carried further, until the whole of our commercial law is a legislative code. But even then case law must play a considerable part. Judges will never be entirely shorn of their opportunities as lawmakers. Customs and usages may still be proved when not in contradiction to the general law.

It is always interesting to look back to some of the earliest commercial decisions

which involved disputes very familiar to-day, but which settled those "certain general principles . . . known to all mankind, not only to rule the particular case then under consideration, but to serve as a guide for the future". Such were: *Calye's Case* (1584) on the liability of innkeepers for the goods of guests; *Coggs v. Bernard* (1704), where Chief Justice Holt elaborately laid down the law of bailments; *Simpson v. Hartopp* (1744), deciding that distress could not be levied on goods actually in use; *Lickbarrow v. Mason* (1788), settling the rights of a *bona fide* assignee of goods in the case of stoppage of goods *in transitu*; *Elwes v. Mawe* (1802), on the subject of fixtures which could not be removed by a tenant; or the Scotch case, *Alexander v. Montgomery* (1773), showing that letters of offer and acceptance must be at one to make a concluded agreement. The much-quoted case, *Collins v. Blantern* (1767), showed the attitude of the Courts towards an illegal consideration. Here Chief Justice Wilmot, holding a promissory note invalidated by such illegality, used those celebrated words: "This is a contract to tempt a man to transgress the law, to do that which is injurious to the community; it is void by the common law; and the reason why such common law says such contracts are void is for the common good. You shall not stipulate for iniquity. All writers upon our law agree in this, no polluted hand shall touch the pure fountains of justice"

The Commercial Court marks a step forward in the development of commercial jurisdiction which was needed in view of the decline which the ordinary Courts had experienced when the sittings at the Guildhall were given up. Complaints were for a long time made in the City as to the want of a satisfactory understanding of commercial disputes by the judges, and in legal centres as to the diminution of commercial causes. The report of the Judicature Commission in 1874 dealt at large with the proposals for Commercial Courts, comparing the customs of France, Belgium, and Germany, recommending many modifications, but deciding that the case for a judge who administered the law as against a merchant who decided according to his ideas of commercial justice was overwhelming. The recommendations of the Commission, however, were not acted upon, and nothing was done until in 1891 a feeble attempt was made to revive the confidence of merchants in the ordinary Courts by re-establishing sittings at the Guildhall. These sittings, though still possible, were short-lived in practice. In the meantime commercial arbitration made great strides.

It was due to the recommendation of the judges themselves that a separate list was established for commercial causes in 1895, and that a Commercial Court was established in London, with Sir James Mathew as first judge. It was intended that the same judge should sit regularly in the Commercial Court, thus having cognizance of all stages of the action. This has not been carried out, but there have usually been several members of the Bench strong in commercial qualifications, one of whom was able to say before he himself went on the Bench that the Court was now "an appropriate tribunal and one commanding the confidence of commercial suitors". Commercial causes assigned to this Court include causes arising out of the ordinary transactions of merchants and traders; amongst others, those relating to the construction of mercantile documents, the

export and import of merchandise, affreightment, insurance, banking and mercantile agency, and mercantile usages. A Commercial Court also sits in Liverpool.

In recent years there is to be noticed a marked tendency to bring statute law into harmony with the laws of the British Dominions affecting commercial subjects, and discussion which will one day, no doubt, bear fruit has also taken place on harmonizing our mercantile law with that of foreign countries, where in some notable cases it is out of touch. The Commercial Laws of the Empire, which form the subject of a chapter in this Part, naturally find a place in that attention which is being bestowed at large upon all questions affecting the common welfare of the Empire

It is not, however, all lawyers or all legislators who are reformers, and much remains yet to be done It is one of the ironies of our law that, while everyone is presumed to know the law, experienced practitioners constantly disagree both upon the law and the procedure, and eminent judges differ on what are often thought to be the simplest points. The loss on successful appeals alone is therefore immense. While a considerable portion of commercial law is now statutory, and general principles can be laid down with certainty, much of our everyday law is still at large, and there is no general code, or even commercial code, as is often obtainable by, and fully intelligible to, the citizens of other countries. It has been said to be an advantage that our law is not cramped and rigidly confined within a narrow compass, but it is an advantage which will not be recognized by the business man in search of definite information and prompt decision.

The delays, the invariable expense, the uncertainty of the decision, still perplex the business man, to whom the best advice is to avoid litigation, and only the second best to consult the most trustworthy practitioner should legal proceedings be forced upon him. It is not to be wondered at that business men have a dread of litigation, that many submit to unjust demands rather than engage in a legal suit whose only certainty is cost of time and money. The sentences which the biographer of the Victorian Chancellors has selected as the noblest that Lord Brougham ever spoke have still a meaning for us: "It was the boast of Augustus—it formed part of the glare in which the perfidies of his earlier years were lost—that he found Rome of brick and left it of marble; a praise not unworthy a great prince, and to which the present reign also has its claims. But how much nobler will be the sovereign's boast when he shall have it to say that he found law dear and left it cheap; found it a sealed book, left it a living letter; found it the patrimony of the rich, left it the inheritance of the poor; found it the two-edged sword of craft and oppression; left it the staff of honesty and the shield of innocence."

To the practical treatment which has been given of the subject-matter of the following chapters specimen forms have sometimes been added. These are given rather by way of illustration than as precedents. It has not been thought advisable to cumber the text by the formal citation of Acts of Parliament, nor by the full reference to the reports of the few leading cases which have been cited. Where necessary, the essential differences in the Scots and Irish Law have been outlined.

CHAPTER I

CONTRACT

The Nature of a Contract—Capacity to Contract—Contracts in Writing—Consideration—Illegal Contracts—Avoidance of Contracts—Assignment of Contracts—Termination of Contracts—Discharge of Contracts—Equitable Remedies—The Law of Contract in Scotland.

THE NATURE OF A CONTRACT

A Contract is an agreement which the Courts of Law will enforce. The parties to the contract must come to terms; that is a *sine qua non*; but though an agreement is made, it may not be such that the Courts will enforce it. Once, however, an agreement amounts to a contract, if one party refuses to perform his part of it, the other party has his remedy at law.

Offer and Acceptance

An agreement, whether it be of a simple or complicated nature, can be split up into an offer on the one side, and an acceptance on the other; such an analysis constitutes an easy method of ascertaining whether there is in fact an agreement or not. There may be much preliminary negotiation before a definite offer is made, before a definite acceptance of that offer is given, but in the end the agreement when made consists of these two elements. To take a simple illustration: A sale of goods consists of an offer of goods by the vendor at a price and the acceptance of the goods at that price by the purchaser. The offer and acceptance, except in special cases, may be by words or conduct; if A delivers goods on B's premises, and B uses them, there is an acceptance by conduct, constituting a binding contract to pay a reasonable price for them. The mode of acceptance may often be indicated by the person who makes the offer, a point of considerable importance in commercial contracts, where business is conducted by correspondence. Thus an offer by letter through the post implies that the acceptance may be by the same means. Now an offer before it has been accepted may be revoked; an acceptance before it is communicated may be recalled; hence if an offer is made by letter through the post, an attempt to revoke it by telegram would be futile if, prior to the receipt of the telegram, the letter accepting the offer had been posted. If a letter accepting an offer sent by post be posted, but does not reach its destination, through no fault of the sender, the acceptance is nevertheless binding.

An offer need not be made to a definite person, it may be made to the whole world, and will bind the person who makes it, once it is accepted by an individual. A common example of this kind occurs where an offer is made by advertisement in a newspaper: once such an offer is accepted by any individual in the mode indicated by the advertisement the contract is complete. Care must be taken to distinguish a definite offer from mere negotiation. A telegram in the following terms: "Offer you my horse for fifty pounds", contains a definite offer which, if accepted, would bind the sender. Whereas a telegram to the following effect: "Would you take my horse for fifty pounds?" would be considered to be in the nature of a preliminary negotiation. Where a tender or estimate for work is sent in by request, the tender or estimate only amounts to an offer, and must be accepted before there is a contract.

CAPACITY TO CONTRACT

It is not every person who has full capacity to contract. Infants, lunatics, drunkards, married women, and corporations, for various reasons which account for this curious association, have only limited powers of contracting.

Infants

Contracts by infants for money lent or to be lent, or goods supplied or to be supplied (other than for necessaries), are void; nor can such contracts be ratified after the infant comes of age, although there be a new consideration; e.g. if a minor borrows money from a moneylender, and upon coming of age he promises that in consideration of the moneylender not suing him for the loan, he will pay at some later date, the promise is not binding. (See also Chapter XII of this Part.) But an infant is liable for necessaries supplied to him, the onus of proving that the goods were in fact necessary at the time they were supplied being upon the person who supplied them. What goods are necessaries depends upon the station in life of the youth. If a minor at the University were to lose his gold links, a jeweller could safely supply him with another pair on credit: such goods might be necessaries to an undergraduate but not to an errand boy. Contracts of service for the benefit of the infant may be enforced against him. Continuing contracts—a lease, a partnership, partly paid shares in a joint-stock company—entered into by an infant are voidable, and may be repudiated by him at any time before he comes of age; but if he does not then repudiate them, they will bind him. Although generally speaking not liable on his contracts, an infant is liable in a civil action for all damage committed by him through his wrongful act. Thus if he owns a motor-car and negligently runs a person down, he is liable in damages.

Lunatics and Drunkards

Contracts made by a lunatic are binding upon him unless it can be shown that at the time the contract was made not only was he insane, but that the other party knew of his condition.

The same principle of law applies in the case of a drunkard. He can ratify the contract when he becomes sober so as to bind himself.

Married Women

A married woman was formerly (and if married prior to 1883 is still, as to property acquired before marriage) under serious disabilities, but she can now contract so as to bind her separate property present and future. She is under no personal liability; the liability only comes into existence as and when she possesses separate estate.

Corporations

Corporations cannot contract beyond their statutory power. (See Chapter IV of this Part.)

CONTRACTS IN WRITING

Generally speaking it is immaterial whether the terms of a contract are reduced to writing or not, although from a business point of view a written contract obviously lessens the possibility of dispute. Once a contract is put into writing, verbal evidence is not permitted to be given to vary its terms, except (*a*) to establish a contract supplemental or collateral to the main contract, e.g. although a lease be in writing it would be permitted to prove that the lessor verbally promised to keep down game; or (*b*) to explain expressions used in the written document, or (*c*) to prove a usage or trade custom if not contrary to the terms of the contract. But if the written document embodying the contract be lost or destroyed, evidence can be given of what the document actually contained; in commercial matters there is usually a copy taken of important documents. But once the original is not forthcoming and its absence accounted for, a copy as evidence has no more legal worth than verbal evidence, although from a practical point of view it is clearly more useful and convincing.

Contracts that must be in Writing

Certain contracts must be in writing, viz. (*a*) A Policy of Marine Insurance (see Part VI); (*b*) an assignment of Copyright (see Chap. XV of this Part); (*c*) bills of exchange (see Chap. VII of this Part); (*d*) an acknowledgment of a debt barred by the Statute of Limitations, with the signature of the debtor or his agent. When a debt is thus barred there must be, in order to take it out of

the Statute, one of three things: an acknowledgment of the debt, from which a promise to pay it must be implied; or an unconditional promise to pay the debt; or a conditional promise to pay the debt, and evidence that that condition has been performed.

The Statute of Frauds

Certain contracts are required by the Statute of Frauds to be in writing, viz. (i) Contracts of Guarantee (see Chap VIII of this Part); (ii) Agreements in consideration of marriage, i e agreements in the nature of marriage settlements, not a promise to marry, (iii) Contracts by an executor or administrator to answer damages out of his own estate; (iv) Contracts concerning interests in Lands (see Chap. XX of this Part); (v) Contracts not to be performed within the space of one year from the date of entering into them: if the contract *can* be performed within the space of a year it need not be in writing, even though there may be a strong possibility that in fact it will extend over the year, e.g. a contract to supply milk daily from the 1st January 1909 to 2nd January 1910 must be in writing, whereas an agreement by a man to pay his wife a weekly sum for the maintenance of his child need not be in writing, because the child might die within the year. Further, if one party can perform his part of the contract within the year, no writing is necessary to evidence it. If, however, it is the intention of the parties that the contract should continue for more than a year, then it must be in writing, notwithstanding the fact that it might be performed within the year.

No action can be brought upon any of these five classes of contracts under the Statute of Frauds unless there be some memorandum in writing signed by the party to be charged or his agent. It will be noticed that all that is required by the Statute is a memorandum, not the actual contract itself. The memorandum need not be contained in one document; it may be in a series of documents, e g. a detailed correspondence. But the memorandum, whether it consists of one or more documents, must record all the essential terms of the contract: e g. if the price is not in writing, the memorandum would be valueless. The memorandum is not conclusive of the contract, it is quite open for the defendant in an action to deny the contract, and to prove that the memorandum produced by the plaintiff does not represent the terms of the contract at all; the Statute only says that the plaintiff cannot successfully bring his action unless the evidence be in writing, signed by the party to be charged, i.e. the defendant or his agent. Moreover, it will be noticed that the memorandum need only be signed by the party to be charged, not by both parties; if a farmer undertakes to supply a dairyman with milk daily from 1st January 1908 to 2nd January 1909, and disputes arise over the contract, the farmer could not succeed in an action against the dairyman unless he had a written memorandum of the agreement signed by the dairyman; and *vice versa*, the dairyman could not succeed in his action against the farmer unless he could produce a written memorandum signed by the farmer.

The signature may be affixed by a stamp, and it may be placed in any position on the memorandum provided that an intention of acknowledging the contract can be thereby inferred.

The Sale of Goods Act

Contracts for the sale of goods over £10 must, under the Sale of Goods Act, 1893, be evidenced by writing signed by the party or his agent to be charged, unless the buyer shall accept part of the goods so sold, and actually receive the same or give something in earnest to bind the contract, or in part payment. (See Chapter VI of this Part.)

CONSIDERATION

No contract, if not made by deed, is binding unless there is consideration for it. The amount of the consideration is quite immaterial for the purpose of supporting a contract, although it may be material for the purpose of ascertaining whether the contract was induced by fraud. A promise to make a gift of £10 is not binding because there is no consideration for the promise; but if a person undertakes to do anything for the £10, no matter how small or how great, then there is consideration, and the promise to pay the £10 is binding. In business matters no doubt the consideration is usually quite clear; one party undertakes to do certain work, to deliver certain goods, to give personal or professional services, &c., for some pecuniary remuneration to be paid by the other party. But it is not at all essential that the consideration should consist in the promise to do or give something; it may equally well consist in the promise to forbear from doing something, e.g. "I will not bring an action for debt against your son, if you promise to guarantee

the debt." If that offer is accepted, there is a good contract. A common instance of the absence of consideration is the acceptance of a smaller sum of money in satisfaction of a larger sum. Such acceptance is not binding, and the creditor may bring an action against the debtor for the balance; but by a somewhat curious refinement of law, the acceptance of a cheque or other negotiable instrument for a smaller amount than that due constitutes a binding contract. In the case of disputed debts, it is a matter of common occurrence for the debtor to send a smaller sum by cheque in settlement with a covering letter to some such effect as follows: "Herein please find cheque, which is to be accepted in settlement or returned." The receiver of the cheque is not bound to accept it in settlement. Nor is he bound to return it, although no doubt it would savour somewhat of commercial dishonesty not to return it. If he intimates either by words or by conduct in any way that he has accepted it in settlement, then there is in fact a settlement; otherwise he can sue for the balance. The safest method for a debtor to adopt under such circumstances is to send a post-dated cheque, with a letter to the effect that if a reply is not sent accepting the cheque in settlement, the cheque will be stopped Motive must not be mistaken for consideration; for example, the promise by an executor to give a widow the house of her late husband, because the deceased wished it, is not binding on the executor.

The only person who can sue on a contract is the person from whom the consideration proceeds. He is not necessarily the person to derive any benefit from the contract. If a person promises to give £50 to his nephew in consideration of another uncle giving a like amount, the nephew cannot sue on the contract in case either of the gentlemen refuses to carry out his promise.

Past Consideration

A promise to reward a person for something done in the past is not binding, as there is no consideration. Suppose a person voluntarily puts himself to great trouble and expense on behalf of another, who, when he hears of it, promises to reimburse him for such trouble and expense; the promise is of no effect if he subsequently repudiates it. There are, however, exceptions, or rather apparent exceptions, to this doctrine (i) If work is done *at the request* of a person, there being at the time of the request no promise or implied promise to pay for the same, yet if at a later date he in fact promises to pay, he can be held to his promise. Note that this case differs from the quite common case where an artificer or a professional man is requested to do something *in the way of his trade or profession*; for in such a case the law implies a promise to pay a reasonable price although no promise is in fact made. If A asks an electrician to come to his house and repair the electric wires, A must pay a reasonable price; but if A asks a friend, who knows something of electric wiring, to do the same work, no matter how much labour and time he expends on it, the friend is not entitled to any payment, but if he complains the week after that A ought to compensate him for his loss of time, and A promises him a sovereign, A must pay it (ii) Another exception arises where a man voluntarily pays that which another is legally compellable to pay. This exception is somewhat doubtful. If a doctor provides medical services to a pauper for whom it is the duty of the guardians to provide, a promise by the guardians at a subsequent date to remunerate the medical man for his voluntary kindness would no doubt be enforceable by action.

Gratuitous Contracts

It is not to be assumed because a contract made without consideration (a gratuitous contract, as it is called) is not enforceable at law that it follows that there are no obligations whatsoever attaching to it. Take the case of gratuitous bailments, where for no reward one person takes care of the property of another; if through his gross negligence any damage happens to the property, he would be liable to the extent of the damage. The negligence, however, must be of a gross character before any liability would attach to him.

ILLEGAL CONTRACTS

Contracts may be made for consideration, but, by reason of their being tainted with illegality, may not be enforceable. The following are the principal instances:—

(*a*) *Contracts to commit crimes.*—Such contracts are obviously contrary to public policy.

(*b*) *Contracts for an immoral consideration.*—In respect to this class of contract a distinction must be drawn, e g. an agreement to remunerate a person for immoral cohabitation in the future would be bad, but such an agreement under seal in respect of an immoral cohabitation in the past would be good.

(*c*) *Agreements in restraint of marriage, or to pay a commission for procuring a marriage*, are void.

(*d*) *Agreements in restraint of trade* are under certain circumstances illegal (the subject is closely connected with trade unions) (See also Chapters X and XVI of this Part.) These agreements are mainly of two kinds: (i) to restrain a person from carrying on his calling upon the sale of his business or after the expiration of a partnership, agreement of service, or of apprenticeship, (ii) agreements amongst manufacturers, &c., to regulate prices, output, and similar matters. As regards the former the agreement must be for consideration, and the restraint must not be more than is reasonably necessary to protect the person imposing it, nor must it be so great as to affect the public welfare. There is no limit as to the area within which the restraint is to operate, providing these conditions are fulfilled; e.g. it would be unreasonable to exclude a vendor of a retail baker's business from carrying on a similar business within a radius of more than twenty miles, whereas it would not be unreasonable to exclude a manufacturer of guns from manufacturing in any part of the world. Similarly in the latter class of agreements, the Courts will enforce them provided the restraint is only partial, that it is reasonable for the benefit to be secured, and that it is made for consideration. If the party for whose benefit the restraint is imposed himself commits a breach of the contract, the contract itself is gone and the restraint is no longer binding, as when a commercial traveller, in consideration of the wages to be paid to him, agrees that upon his leaving the service of his employer he will not canvass for customers on behalf of any other manufacturer carrying on the same business within a radius of fifty miles. If the commercial traveller is wrongfully dismissed from his employer's service, he would be at liberty to accept any situation that he could secure.

(*e*) Contracts by way of "*champerty*" *and* "*maintenance*" are illegal. The former are agreements to give information to enable a person to recover property in consideration of sharing in the proceeds. The latter are agreements to foment litigation by paying the expenses of the litigating party. If the assistance promised is out of charity to aid a poor litigant to enforce his rights, there is no illegality, but such a motive must not be tainted with some further improper motive, a desire to humiliate or put to expense a distasteful opponent.

Once, however, a person has a legal right to litigate, the motive for bringing a lawsuit would not affect that right. A person, with the object of making a co-director bankrupt and thus removing him from the board, takes a legal assignment of debts from his creditors, in consideration that he will commence action upon the debts, and if successful will pay the proceeds over to the respective creditors, but if unsuccessful will not charge the creditors with any costs. Such an agreement is not illegal on the grounds of maintenance, but if, without taking an assignment of the debts, he had agreed, *with the above object in view*, to indemnify the creditors against any loss they might sustain by launching actions against the debtor, then the agreement to indemnity would not have been binding.

It must be remembered that, in addition to the contract itself being illegal, an action will lie for damages on the grounds of maintenance. It is quite legitimate for the expansion of one's business, to agree to indemnify customers against actions brought by a rival trader; a trader, in consideration that a customer should take his goods, may agree to indemnify the customer against an action which he fears may be brought against him by a rival trader, who alleges that the customer in question is under a contract to take the goods from him and him alone.

(*f*) Many of the above contracts are said to be unenforceable because they are *against public policy*. This is a wide term, and varies from age to age as society and views change; that which is against public policy in one century is not objected to in another. A familiar example of such a change is to be seen in contracts in restraint of trade, which at one time were universally bad as being contrary to the public good, whereas at the present time, owing to the improvement in the means of transit and communication, the doctrine of restraint of trade has a very liberal interpretation. Other illustrations of contracts which the Courts consider at the present day to be against public policy are contracts prejudicing the public service; contracts tending to affect the good relations existing between this country and foreign states; contracts to bring about an abuse of legal process or an interference with the course of justice. As an example of an attempt to extend this doctrine of public policy may be cited the statement of Lord Shaw in the case of the Amalgamated Society of Railway Servants *v.* Osborne (1910), that a trade-union rule, providing for a subscription towards the upkeep of a parliamentary candidate to vote in accordance with the dictates of the union which paid his salary, was void as against public policy.

(*g*) All contracts by way of *gaming and wagering* are now void by statute, and no money or valuable thing alleged to have been won, or to have been deposited in the hands of any person

to abide the event on which any wager shall have been made, can be recovered in an action. The statute does not include an agreement to subscribe or contribute towards any prize or sum of money to be awarded to the winner of any lawful game or pastime. A person who deposits money in the hands of a third person to abide the event of a wager can recover it back before or after the event is determined, at any time before the money has been paid over to the winner, but not after; if notice is given to the stakeholder not to pay the money over to the winner, but he pays it notwithstanding, he is liable to refund it to the person who deposited it.

[As to Stock Exchange, see Part IV.]

Not only are wagering contracts illegal, but money lent for the purpose of wagering cannot be recovered, whilst agreements to pay commission in relation to wagers are null and void and cannot be sued upon. But where, in pursuance of a wager, a person has received money on behalf of the winner, he must pay it over to the winner. An attempt has been made within recent times to get over the statute by setting up a new contract in place of the old gambling debt, so as to sue upon the new contract. This has been successfully carried out in a few instances where the parties to the wager have been members of the same betting club. The winner threatens to expose the loser to the committee of the club, involving the consequent disgrace of his being expelled; the loser in consideration of the winner abstaining from such a course of action promises to pay the sum due; he fails to do so, and is successfully sued for the sum due on a contract to promise to pay the amount, not in consideration of the wager, for that would be useless, but in consideration of the plaintiff not having exposed him. All securities given for money lost on wagers on games or pastimes, or the players, are deemed to be given for an illegal consideration, so that the person to whom they are given cannot recover on them in a court of law, nor can a person to whom they are endorsed even for value, if he has notice of the purpose for which they were given. There is, in this respect, a difference between bets on games and pastimes, or the players, as distinguished from all other bets, which can be best brought out by a practical example. If a person gives a promissory note to another in settlement of a bet on a cricket match, and the promissory note is endorsed over for value to a friend who has full knowledge of the circumstances, the friend cannot recover, but if the subject-matter of the bet had been anything else than a game or a player in the game, e.g. if it had been on the result of an election, then the friend under precisely the same circumstances could have recovered. The distinction arises from the fact that the cases are governed by different statutes.

Certain commercial contracts are really of the nature of wagers, but in the interests of commerce are enforceable. Of such a character are contracts of insurance; thus a policy of marine insurance that a ship will reach her destination in safety is nothing more than a bet that she will arrive safely; if the underwriter wins, he retains the premium; if he loses, the assured gets the policy moneys. (See Part VI.)

AVOIDANCE OF CONTRACTS

Fraud

Contracts can be avoided on other grounds than illegality of consideration. Fraud vitiates a contract. A contract induced by a fraudulent misrepresentation can be repudiated. Certain essential elements must be present before a contract can be repudiated on such grounds, viz.: (*a*) the representation must be untrue in fact: (*b*) it must be untrue to the knowledge of the person who makes it, or made heedlessly without caring whether it be true or false; if, on the other hand, the person making it *bona fide* believes it to be true, it cannot be fraudulent no matter how puerile the belief be. These are difficult questions of fact, and precisely the same facts may strike one jury one way, another jury another way, but they must give an answer to the question, was it made with a *bona fide* belief in its truth? The question very commonly arises in connection with company directors and shareholders. (See Chapter IV of this Part.)

(*c*) Thirdly, the misrepresentation must have induced the contract; a person who acts upon his own knowledge, and does not rely upon the misrepresentation, cannot avoid the contract on that ground. Suppose a vendor fraudulently represents his horse to be sound when he knows it to be the contrary, but the purchaser says that he will depend upon his own examination, he cannot at a later date complain of the misrepresentation. On the other hand, it is no answer in the mouth of him who fraudulently misrepresents to say that the other party could easily have discovered the misrepresentation if he had used ordinary intelligence. (*d*) The misrepresentation must be in re-

spect of something material to the contract. A person who suffers actual damage from the fraud of another, even though that person be not a party to the contract, may bring an action for deceit against him to recover the loss he has sustained; it must be proved that the person guilty of the fraud intended the one defrauded to act upon it. A fraudulent misrepresentation need not be made direct to a person, it is sufficient if it be intended to reach his ears and does in fact do so

Innocent Misrepresentation

An innocent misrepresentation, if material, entitles the party to the contract to repudiate it. For instance, businesses are often sold on the innocent representation that the returns are greater than they in fact are; such a representation is most material to the purchaser, and on discovery of the error he may repudiate the contract. But such a representation would not give a right to recover damages, as would have been the case if the representation had been fraudulently made.

A person must make up his mind either to repudiate or affirm the contract. If he acts under the contract after he has knowledge of the misrepresentation, he cannot repudiate it.

Undue Influence.

A contract may be set aside on the ground of undue influence, where the influence of one party over the other is of such a nature that although the contract was in fact assented to, in reality there was no free exercise of judgment in the matter at all; this has been successfully established where the parties have been very far removed in social and educational status; or where one has by constant association obtained a strong influence over the mind of the other; as where a man of weak intellect enters into a contract disastrous to himself with a man of strong will, who has for some time been his companion and directed his movements. Undue influence is presumed until the contrary is proved where contracts are entered into between persons standing in a relationship which implies confidence in the one by the other, e.g. contracts between children and parents, solicitors and clients, doctors and patients, spiritual advisers and persons under their religious influence, trustee and beneficiary under the trust. But once the relationship has ceased, undue influence will not be presumed. A lady having left a convent contracts with her late spiritual head; in the absence of undue influence being definitely proved the contract is good.

Duress

Contracts can be repudiated if obtained by duress; here there is no real consent at all, as the person is compelled to consent either directly by threat of bodily violence, or indirectly by threatening one's husband or wife with violence or disgrace; even threatening to detain goods may be sufficient. The duress must be by the party to the contract or his agent.

Mistake

The effect upon a contract of a *bona fide* mistake depends upon whether the mistake is mutual or on one side only. The parties may have really fully agreed upon the terms of the contract, but by mistake these terms have been wrongly expressed in writing. Such a mistake may be rectified by either party. But both parties may have made a mistake either over the subject-matter of the contract or the existence of the subject-matter. In such cases there is no contract at all A contracts to sell B a mare called Alice, and B thinks A is selling another mare of the same name, and under that misapprehension buys, here there is no contract; or if A sell B the mare Alice, and neither A nor B knew the mare was dead at the time of the sale, there is no contract But it is otherwise if the mistake is on one side only. Such a mistake cannot be rectified, nor would it avoid the contract apart from fraud. So a person who signs his name to a written document cannot be heard to say that he has mistaken its contents or legal effect; of course in the case of fraud there would be a good answer to the person who induced it, but not to a person who was not a party to the fraud. Occasionally a person makes a mistake as to the identity of one with whom he is contracting; if the other party knows of his mistake he cannot enforce the contract. Mere loss of memory may amount to a mistake, as where a mother by deed poll appointed certain funds to one daughter, to take effect upon the mother's death, for the purpose of making that daughter's share equal to another daughter's, quite forgetting that she had by a deed executed some years previously already brought about that result. The second deed was declared void by the Court by reason of the mistake due to defective memory.

The fact that a person does not get what he thought he was bargaining for does not amount to mistake so as to entitle him to repudiate the contract, provided that the other party to the contract does not do anything to induce the mistaken impression, for that would amount to fraud.

If a person buys a bicycle under the impression that it was made by a certain well-known manufacturer he cannot complain if it turns out not to be so; nor would it make any difference if he honestly thought that the seller intended to sell him a cycle of that make, unless the seller was himself aware of the exact state of affairs and allowed the mistake to continue.

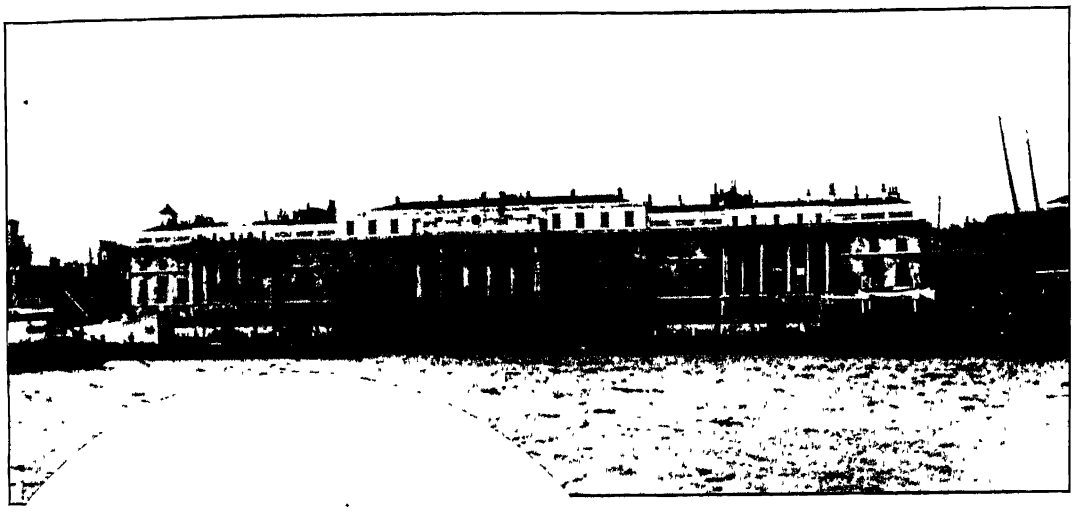
As a general rule there is no onus upon one party to disclose to the other anything in connection with the subject-matter of the contract, remembering always that he must not deceive if he is asked questions. *Caveat emptor*, "Let the *buyer* beware", is the rule of the market. The buyer of a lame horse, who thinks it is sound, is unfortunate, but he has no remedy by reason of the fact that the seller perfectly well knew that the horse was not sound, and did not warrant it so. Of course different considerations enter once there is a misrepresentation; it is one thing to say, "I have a horse to sell", it is another thing to say, "I have a sound horse to sell". A different rule as to disclosure, however, applies in the case of contracts of Insurance, where the utmost good faith is required. (See Chap. XIX of this Part.)

ASSIGNMENT OF CONTRACTS

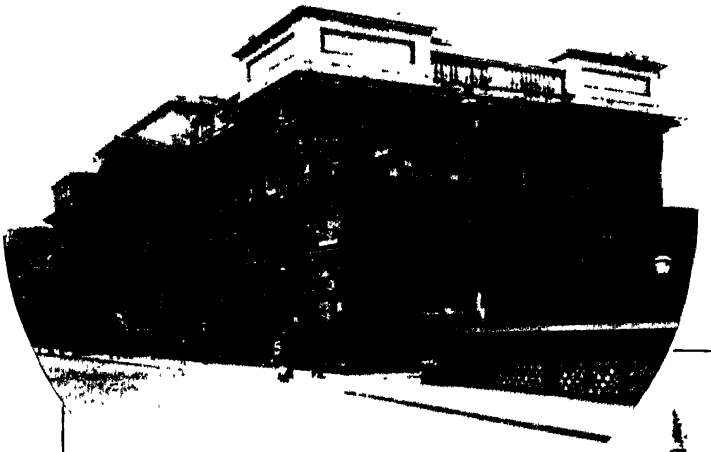
With the gradual growth of the freedom to contract, so well exemplified in our commercial law, there has gone on apace the freedom to assign the benefit and even the liability of a contract At one time, no doubt, the right to assign the benefit of a contract was extremely limited, the only assignable contracts of importance being those coming under the head of negotiable instruments. The exigencies of trade make it imperative that the Courts should enforce, say, a bill of exchange in favour of a person who originally was a stranger to the bill. The Courts, however, will enforce contracts which have been assigned provided that notice of the assignment has been given. The assignee takes subject to "equities", that is, subject to such defences and rights of others that would have been good against the original party to the contract, and which came into being at a date prior to the assignment. The only inconvenience in such assignments—they are known as "equitable assignments"—is that in most cases the assignee cannot sue in his own name, but must use the name of the assignor To remedy this it is provided by statute that under certain conditions the assignee may sue in his own name; otherwise he must as heretofore use the name of the assignor.

The requirements of a legal assignment are: (i) the assignment must be in writing, signed by the assignor; (ii) express notice of the assignment must be given in writing to the other party; (iii) the assignment must be absolute and not by way of charge. Some confusion in respect of the last requirement that has arisen from time to time may now be said to be set at rest. An assignment of a debt by way of mortgage, if absolute on the face of it, is a good assignment within the meaning of the statute, even though there is a redemption clause. Thus, to take two examples: (i) "A charges the debts due to him from B in favour of C, a creditor of A"; this is not a legal assignment, it is merely an assignment by way of charge; but (ii) "A absolutely assigns the debts due from B in favour of C, a creditor of A, provided that if A pays C what he owes, C will re-assign to A the said debts due from B"; this is not by way of charge, but is an absolute assignment within the meaning of the statute

Once a personal element enters into a contract it is not assignable at all without the sanction of the other party to the contract Thus, if a person undertakes to supply so many eggs each week for a year, the party ordering the eggs cannot assign the contract, for the seller might not be at all willing to accept the credit of the proposed assignee. A better example, no doubt, is where the party depends upon the particular skill of the person with whom he contracts, as when a man engages a Royal Academician to paint his portrait, the contract is obviously not assignable. This case must be distinguished from a class not at all uncommon in commercial transactions, viz. where a person orders goods which anybody in the trade could make, and where no special reliance is placed upon the particular skill of the person from whom the goods are ordered. The benefit of such a contract is assignable, but each case will depend upon its own particular facts. Some firms undeniably have obtained world-wide fame for the production of a class of goods made in fact by all other competitors in the trade. In such a case it might be difficult to rebut the evidence of the buyer that he relied upon the particular manufacture of the seller, which the seller well knew. Cases of this kind are not likely to arise frequently in practice, because manufacturers of this stamp do not often have occasion to assign their contracts, unless in a formal way when the business is turned into a limited company. If only the manufacture of the goods is in question the turning of a business into

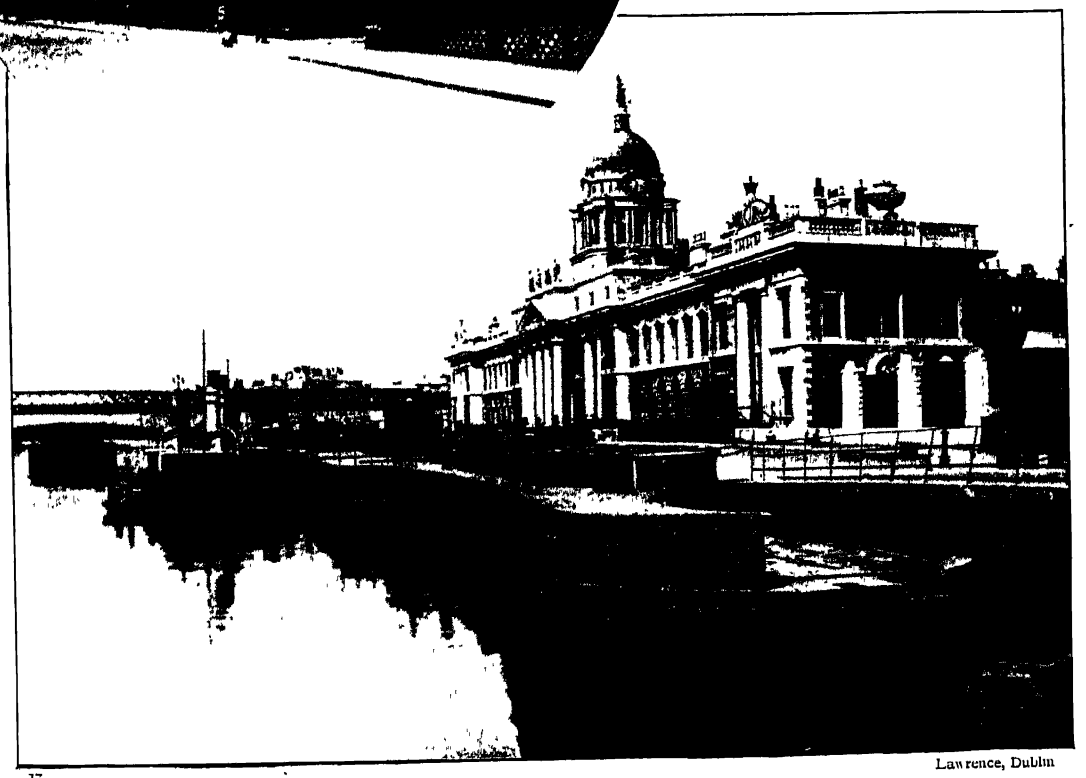


CUSTOM HOUSE, LONDON



CUSTOM HOUSE, LEITH

(From Photograph by Ritchie, Edinburgh)



Lawrence, Dublin

CUSTOM HOUSE, DUBLIN

a limited company would not affect the question, because from the point of view of the quality of the goods the position would be unchanged; but if the credit of the firm is in question, as would be the case of a buyer under a continuing contract to take goods at stated intervals, the turning of the business into a limited company would make all the difference in the world, as the credit of the firm might well be a very different thing from the credit of the company, and consequently the seller would be entitled to refuse to recognize the company.

Rights and liabilities under contracts may be assigned by operation of law, that is, without the consent or will of the parties. The position of the parties to the contract in the event of the bankruptcy of one of them will be found dealt with elsewhere. (See Chapter XI of this Part.) In the case of death the personal representatives, that is the executors or administrators, can sue or be sued in respect of the deceased's debts, and the benefits and burdens of contracts pass to them provided the contracts are not of a personal nature, such as a contract for personal service, and that no intention can be deduced from the terms of the contract that it was to come to an end upon the death of one of the parties. The personal representatives can sue or be sued for breaches of contract committed during the lifetime of the deceased, except where the contract touches the person or feelings of the deceased Thus, a right of action for breach of promise of marriage ceases upon the death of the aggrieved party. So where a railway passenger is injured in a railway accident, he would have a right of action against the railway company for a breach of their contract to carry him in safety. But that right of action would cease with the death of the injured party. (If the death was the result of the accident, the "dependents" would have a right of action under Lord Campbell's Act.) (See Part V.)

Covenants which "run with the land", i.e. covenants which affect the land irrespective of the particular owner for the time being, constitute another instance of the assignment of obligations by operation of law The nature and legal effect of such covenants is discussed elsewhere. (See Chapter XX of this Part.)

TERMINATION OF CONTRACTS

It remains now to consider how contracts, which have been validly entered into, come to an end.

Performance

The simplest and most natural method to bring a contract to an end is by its performance in accordance with the terms. This is, of course, the lot of most contracts, and it would be a serious thing for business if it were otherwise. In order to avoid the possibility of dispute the contract must be performed in accordance with the terms. Thus, if anything is to be done on a certain day, there is no performance if it is done on another day. That would not necessarily mean that the contract might on such grounds be repudiated; whether the contract could be repudiated, or whether the fault would only give rise to an action for damages for the delay, depends upon the particular circumstances of the case.

Payment

The question of due performance often arises, and is of no little commercial importance in connection with payment and tender If a person undertakes to deliver a ton of coals to another at a price of 20s., the contract is duly performed by the vendor when he delivers the ton of coals, and by the purchaser when he pays the agreed price. Payment may be made at any time before action brought, but it is too late after, and part payment before action is *pro tanto* a good defence to the action. The amount of the payment of course depends upon the contract; if no price is fixed, but there is a contract to pay some price, then the price to be paid is a reasonable price. The failure to fix a price is, of course, a most fruitful source of litigation, for if after the work is done the parties cannot agree between themselves as to what is a reasonable price, nothing remains but to take the verdict of a jury. Apart from any express or implied term in the contract, it is the debtor's duty to seek out the creditor, and care must be taken to pay the creditor or some person duly authorized by him. Tradespeople and others constantly pay commercial travellers and other agents who usually have no authority whatever to collect money for their principals; the result is that a tradesman may find himself in the unhappy position of having to pay over again what he has already paid to one who has fraudulently applied the money to his own use. The law, in cases where commercial travellers for London houses solicit orders in the provinces, is possibly not so harsh, for it has

been argued successfully more than once that as the commercial traveller is really the only person known at all to the provincial tradesman (the principal in London being, so far as the tradesman is concerned, a mere myth), it is right to imply a term in the contract that the traveller was in fact authorized to collect payment. But be that as it may, it is the common custom for commercial houses to print on their invoices words to the effect that all remittances are to be made direct to the head office, so that the tradesman, who unfortunately pays a fraudulent traveller, in practice has very little chance of avoiding the necessity of paying again. The safest rule, therefore, to follow is always to remit to the creditor direct. (See also Chapter II of this Part.)

Tender

Payment must be made in legal tender, i.e. Bank of England notes (in England), gold, silver not exceeding forty shillings, copper not exceeding one shilling. A cheque or bill of exchange is not payment. It may be accepted "in accord and satisfaction" (see below), in which case, no doubt, the debt is gone; but usually the acceptance of a cheque or bill of exchange is only a conditional payment, the payment being satisfied upon the instrument being duly honoured.

Receipt

The creditor must give a receipt for any payments of £2 and upwards under a liability to a fine, but a debtor cannot demand the giving of such a receipt as a condition for payment. Nor is a receipt when given conclusive evidence of payment, although naturally it is strong *prima facie* evidence of payment, and evidence upon which, in the absence of anything substantial to the contrary, a judge would act. But it is open to the creditor to prove as best he can that in fact the receipt was obtained from him by some means without payment. A receipt for £2 or upwards cannot be tendered in evidence unless duly stamped, but the debtor in order to prove payment would be permitted to give oral evidence of himself and other persons who were witnesses of the payment, it being for the Court to believe them or not.

A plea of tender of payment, if successful, deprives the plaintiff of costs in the action in which he seeks to obtain payment. The debtor must aver his readiness to pay down to the time of action brought, otherwise he will not succeed in his plea; so if a creditor, having refused payment when first tendered by the debtor, repents of his conduct and demands payment, the debtor must pay, his first tender will not avail him in an action brought upon his subsequent refusal. The creditor is not obliged to give change, but if he raises no objection on this score but only as to the amount, he cannot raise the objection in the action.

Similarly a creditor is not obliged to accept a cheque tendered in payment, but if he does not object to the form of the tender, but only to the sufficiency of it, he cannot raise that objection in the action on the debt. The money must be actually tendered, it is not sufficient to express readiness to tender it, if the creditor will on his side consent to accept it. But if the creditor himself dispenses with the formal tender, then tender becomes unnecessary, as for example if he were to say, "It is no use you offering the money, for I would not accept that amount." The tender must be unconditional. To say to a creditor, "You must accept this sum in full settlement of all that is due", or words to that effect, is not a good tender.

Much confusion arises over this question owing to a lack of appreciation of the principle upon which it is decided. If a creditor were to accept a payment made in some such form as above, he would be making an admission against himself that the sum tendered was in fact all that was due, which would probably prove fatal to the success of any action he might bring for the balance. Therefore, since the debtor puts the creditor by the form of his tender into such a dilemma, the tender is not good. But a tender made in the following form, "I offer you the money in settlement of what I consider due", is a perfectly good tender, for the creditor by accepting the payment makes no admission as to whether he, the creditor, considers it to be all that is due. The following concrete example may be given:—Jones writes to Brown, "Unless I receive cheque for the amount of your account, £50, by Monday morning, I shall instruct my solicitor to take action". Brown replies, "As I have already informed you, I consider the amount of my account to be £45 and not £50, and I accordingly enclose cheque value £45 in settlement, which kindly acknowledge; if you do not agree with the amount you must take such steps as you think fit". Jones returns the cheque, objecting to the amount, and issues his writ for £50. Upon the action coming on for trial, a plea of tender having been put in, the Court decides in fact that only £45 was due, and gives judgment for that amount. Jones has to pay the costs of the action, because the tender not being a conditional tender was good. Tender may be made to an agent or servant properly authorized to receive payment.

Thus, if a solicitor demands payment on behalf of his client, tender to the solicitor is good.

Appropriation

If a debtor owes his creditor an amount made up of various items, the debtor may appropriate any payment in satisfaction to any particular item, or he may appropriate it generally to the whole amount, but he must clearly signify to the creditor, at the time he makes the payment, the appropriation he intends. Otherwise the creditor himself may appropriate the payment, and he need not give express notice of such appropriation. His intention can be shown by the way he brings his action for the unpaid items, or by the form of account he renders to the debtor, or by his election at the trial itself. If there are two debts, one upon a legal and one upon an illegal contract, the law presumes, in the absence of any express intention on the part of the debtor, that a payment was made in settlement of the debt arising out of the legal contract.

Where there is a running account, as between a banker and his customer, then apart from any particular circumstances or special arrangement, the payments into the account are credited against the payments out in order of priority, that is to say, the first debit item is reduced or liquidated by the first payment in.

DISCHARGE OF CONTRACT

Mutual Agreement

Contracts may be discharged by mutual agreement, that is to say, each party may waive his rights under the contract, the consideration of each being the giving up of his right under the contract. If the contract is by deed, it can only be discharged by a mutual agreement embodied in a deed. But other contracts, whether in writing or verbal, may be discharged by a verbal agreement.

There may be a term in the initial contract that upon the happening of a certain event the agreement shall be discharged. A provision of this nature in a contract is termed a condition subsequent.

Merger

A contract may be discharged by "merger", that is to say, by the merging of the obligation into a higher form of contract; for example, a judgment in an action puts an end to the original debt.

Impossibility of Performance

As a general rule the fact that it is impossible to perform a contract does not discharge the contract. The party who is unable to perform it must pay the penalty. But there are exceptions. Thus, where the continued existence of the thing which is the subject-matter of the contract is contemplated, the destruction of that thing excuses performance; e.g. if a person agrees to let another a music-hall as from a certain day, and before the day arrives the hall is burnt down, he would not be liable for damages for not providing the hall. Again, if an Act of Parliament is passed forbidding a man to do what he has contracted to do, he is not liable for not carrying out his contract. A person cannot complain if he himself is the cause of the impossibility of performance of the contract by the other party to it. It is sometimes said that the "act of God" is an excuse of non-performance. This is not strictly accurate, as the "act of God" rendering performance of the contract impossible is no excuse, unless it can be reasonably implied from the contract that such was to be the case; consequently it is usual to insert explicitly in the contract, as in charter parties, that "acts of God" shall excuse further performance. In the case of personal service, impossibility further to perform personally the service discharges the contract; for example, if an artist who had undertaken to paint a portrait were to lose the hand with which he paints he would be discharged from his contract.

Breach of Contract

A breach of the contract by one party usually discharges the other from performance, but not if the breach is in respect of an unimportant part of the contract; what is of material importance turns upon the special circumstances of each contract, and it is often very difficult to determine what is or what is not sufficient to give the right to determine the contract. But once a breach has been committed, the innocent party has a right of action for damages. He is not obliged to consider the contract as at an end, whether he has the right to repudiate the contract or not. Thus, if a printer undertakes to deliver certain catalogues in time for a Christmas trade, and delivers them after Christmas, his customer may safely accept

delivery but sue him to recover the damages he has sustained by the failure to deliver in time.

Accord and Satisfaction

The right of action arising from a breach of contract may be released by an "accord and satisfaction", that is, by the party damnified accepting something else in satisfaction of the original performance. The agreement to accept is not sufficient; there must be actual satisfaction, otherwise the right of action is not ended. The acceptance of a less sum of money than that which is due is not an accord and satisfaction unless there is some further consideration, although, of course, if there were a *bona fide* dispute as to the amount due it would be The acceptance of a negotiable instrument, such as a cheque for a less sum than what is due, is a good accord and satisfaction.

Release of Joint Debtor

The release of one joint debtor is a release of the other joint debtors, just as judgment against one joint debtor puts an end to the right of action against other joint debtors.

EQUITABLE REMEDIES

If damages are not an adequate and sufficient remedy for a breach of contract, the Court may in proper circumstances decree "specific performance" of the contract, as the actual delivery of the particular goods, or grant an injunction to restrain further breach. The former remedy will only be used where the Court can adequately control the proper performance. Thus the Court never decrees specific performance of a contract of service An injunction will be granted to restrain a breach of a contract, when there is a possibility of the breach being repeated, but the Court will not grant an injunction which although negative in form will have the affirmative effect of compelling a person to do a thing. Both the remedies of specific performance and injunction are discretionary.

THE LAW OF CONTRACT IN SCOTLAND

The law relating to contract in Scotland is, in its main and essential features, identical with that of England. The following points of divergence may be briefly noticed. In England the term infant is applied to every person under twenty-one years of age. In Scotland infants are either pupils or minors: a pupil signifying a person under the age of pupillarity (twelve in females and fourteen in males), and a minor a person, male or female, above the age of pupillarity and under that of majority (twenty-one). Pupillarity is, in Scots Law, a state of absolute incapacity. No act of the pupil, or action raised in his name, is effectual without the interposition of a guardian. Minority, on the other hand, is a state, not of total, but of limited incapacity, a minor being capable of consent, but possessing inferior judgment or discretion, and thus requiring the protection of the law. Broadly speaking, it may be said that where a minor has curators, no contract made by him without his curators' consent will be effectual or binding on him; but under the qualification that, if such contract results in a benefit to the minor, it will be binding on those with whom he contracts. Where he has no curators he may validly enter into contracts which will effectually bind him in the same way and to the same extent as though he had entered into such contracts with the consent of his curators. But in all cases where a minor can prove that a contract, into which he has entered, either with or without the consent of his curators, or into which his curators have themselves entered on his behalf, has resulted to his lesion or prejudice, he is entitled to have the contract rescinded and matters restored to their original state. If the contract has been entered into by the minor without his curator's consent, it is absolutely null and void, and no reduction of the contract is necessary; if with his curator's consent, the contract remains valid till it is rescinded. Lesion is presumed in a donation by the minor, and even money borrowed by him will be presumed to be to his disadvantage unless the creditor is able to prove that it was expended for his benefit. There is, however, an exception to this rule in the case of transactions connected with any trade, business, or profession in which the minor may have engaged. Thus, money borrowed by a minor for the purposes of any occupation in which he is interested may be recovered by the creditor, even though the money has been expended to the minor's lesion. But in

all cases a contract entered into by a minor may be ratified by him after he comes of age, and such ratification will be an effectual bar to any subsequent challenge of the transaction. The ratification need not be express, as it may be implied from circumstances or from the minor's conduct. A minor may contract a valid marriage, and even where he has curators he may do so without their consent, but he may be restored against the provisions in a marriage contract if they are to his prejudice.

English Law, it has been seen, requires writing or part performance to the completion of many important contracts. In Scotland every obligation to which writing is not indispensable is effectual where consent is proved. Cautionary obligations or guarantees must, by statute, be in writing, and writing is also required in the assignment of a patent, or copyright, or in the sale or mortgage of a ship, and in contracts relating to land. Bank of England notes are not legal tender in Scotland, nor, it may be added, are Scotch bank notes, which are accorded none of the privileges granted to Bank of England notes in England.

[AUTHORITIES.—The textbooks known under the names of *Addison*, *Anson*, *Chitty*, *Leake*, and *Pollock*. Scots Law: the English text-books; the Scots institutional writers, *Stair*, *Erskine*, and *Bell*; *Brown*, Sale of Goods Act; *Green's* Encyclopædia of Scots Law.]

CHAPTER II

PRINCIPAL AND AGENT

Agency and Classes of Agents—Who may be Principal and Agent—The Formation of Agency—The Authority of Agents and Sub-Agents—Duties, Liabilities, and Rights of the Agent—The Principal and Third Parties—The Determination of Agency—Special Classes of Agents—Form of Agreement for Sole Agency.

AGENCY AND CLASSES OF AGENTS

The principle of agency, which is of the commonest application in commercial life, may be said to be called into being whenever one person with the requisite authority performs for another person an act which that other person might legally do himself. Without such a relationship and principles well understood by the community and recognized by law, any business beyond petty shopkeeping would be impossible.

Agency is only part of the general law of contract, and, as a rule, whatever a man may legally do himself, he may do by an agent. Exceptions only occur in acts relating to a public office or to a duty where personal performance is required, either by special custom or statute or by the confidential nature of the duty itself. The laws of England and of Scotland in relation to all questions of Principal and Agent are identical.

The agent may be formally appointed, or the agency may arise either by implication or relationship, as in regard to certain acts of a married woman, a solicitor, a partner, or other person whose ordinary relationship sometimes implies an agency to bind another party. A clerk or servant may be an agent, but properly an agent is a person who exercises his duties without the constant control of an employer, and is bound only by the terms of the authority under which he acts. (See also Chapter X of this Part.)

An agent is employed for the purpose of placing his principal in relationship with a third party. He is in the ordinary way a means of communication and nothing more. It is not intended that he should be a party to the contract; he only introduces two contracting parties to each other. As an agent is only a means of communication he cannot take any advantage for himself other than his agreed remuneration; he cannot become either buyer or seller without full disclosure of the fact to his principal, and as he is only the agent, he is not personally liable on the contract, except under special circumstances.

At the end of this chapter we have dealt with special classes of agents who are commonly found in business life, and whose callings may be said to be separate professions; but, speaking of agency in the ordinary sense, the term is one which comprises a very large and varying class of persons who in the many avenues of business carry out the instructions of others.

An agent may be specially appointed for the purpose of discharging some specific object or undertaking, and, outside that object or undertaking, have no authority to act on behalf of his principal. An agent may be generally appointed, with larger powers relative to the discharge of all matters in connection with a business or occupation, and he then has the authority to do the necessary acts which are connected with that employment. When a general agency is so created, although it may have special limitations imposed upon it as between the principal and agent, it may often happen that an act outside those limits may nevertheless be binding on the principal as far as third parties are concerned.

A person may be very exceptionally appointed

with an even larger power to act for another, under what has been called a universal agency.

It must, of course, be remembered that the principal or agent may consist of more than one individual: of a firm or a company, a committee or club. A corporation may act as trustee or in any other capacity as agent for an individual or group of individuals. There may be joint agents and joint principals, and where two persons are appointed it is presumed that they are to act jointly, unless a contrary intention is shown. Where there are co-agents they must concur in exercising their authority, and one co-agent is not responsible for the act of another co-agent unless they are partners. An agent must make returns to joint principals, and not to one without the consent of all An agent may in certain cases act for both parties; e.g. an auctioneer on the fall of the hammer, or a broker. (See also Chapter VI of this Part.)

WHO MAY BE PRINCIPAL AND AGENT

A person may appoint another person to do an act which he may lawfully do himself, except where the duty of performance is specially entrusted to him or imposed upon him personally in reliance upon his discretion or skill.

Capacity of Principal

It follows that certain persons who are under disabilities cannot give an agent authority to do an act which they are restrained from doing themselves. A lunatic or person of unsound mind, known to be such, can only appoint an agent during a lucid interval, or be bound by the act of an agent which is in his interests, as on a contract for necessaries. Where the insanity is unknown to the agent, the appointment is binding, and the acts of the agent so authorized are good; a third party contracting with the agent who is ignorant of the insanity of the principal is also protected. Intoxication while it lasts has the same effect as insanity, but a drunkard may ratify his act when he becomes sober again. An infant cannot ordinarily contract, but the agent of an infant can bind him in respect of necessaries

Foreigners are in the same position as British subjects with regard to agency, with the exception that a foreigner cannot own an interest in a British ship, and with the further exception that war suspends all relations between foreigners and British subjects for the time being. Married women are now free to contract like other persons, so they may freely appoint agents.

Capacity of Agent

Incapacity which attaches to principals does not apply to agents. An infant, for example, may at law be an agent to bind others, although such an appointment would clearly be undesirable; but an agent known to be insane cannot bind his principal with regard to third parties who were aware of his insanity. One party to a contract cannot sign as the agent of the other. An agent without capacity to contract on his own behalf cannot become personally liable on a contract he has entered into for another.

THE FORMATION OF AGENCY

Agency may arise out of an express appointment or be implied from the conduct of the parties. Sometimes agency arises from the necessity of the circumstances, a class of agency generally confined to cases in connection with carriage by land or sea, as the rule is that a person who acts for another without his authority binds no one but himself. In other cases an act not previously authorized may be subsequently ratified by one who is the intended principal, and agency is then regularly constituted.

The express appointment of an agent is a business document requiring most careful consideration of all the facts of the case, due regard being had to the nature of the employment and the scope of the duties, and to the future, when the agency shall either have developed or terminated. If the agency is for more than a particular act a formal appointment should be carefully drawn up; but the absence of a formal appointment does not by any means preclude an agency and its terms being otherwise proved or inferred by law.

A person may so conduct himself towards another that third parties may be led to presume that there is an agency subsisting between them; and so an agency by estoppel, as it is called, arises.

Appointment

In Chapter I of this Part it has been seen that certain contracts must be entered into by deed. If an agent is to enter into any of these contracts

on behalf of his principal, the appointment of the agent must be sealed; unless the deed is executed by the agent in the presence and under the immediate authority of the principal.

Where an agent executes a deed for his principal, he should sign his principal's name as well as his own, or he may be personally liable.

A foreign appointment must also comply with the laws of the place where it is made.

An agent of a corporation not a trading company should be appointed under the common seal; for although in regard to acts of an ordinary character and of everyday occurrence, an agent may be appointed without formality, acts of any other character require a deed, and it is better that the agent of a corporation should be appointed by deed.

Trading corporations may enter into any contract without seal which is within the scope of their objects, and may therefore informally appoint agents to perform such acts.

There are other cases, however, in which a corporation has been held liable, although the particular contract was not under seal.

Where the purposes for which a corporation has been created render it necessary that work should be done or goods supplied to carry these purposes into effect, and orders are given by the corporation to that end, and the work done or goods supplied are accepted by the corporation, the other party having wholly carried out his part of the undertaking, there is an implied contract inferred from the acts of the corporation that payment shall be made. This was decided in *Lawford v Billericay Rural District Council* (1903), by the Court of Appeal, in an action by an engineer to recover for a report on plans on a sewerage scheme, and other work.

All contracts of the value of £50, made by an urban sanitary authority, must be sealed, and an agent appointed by such authority must therefore be appointed under seal. An agent for the purchase of land or an interest in land should be appointed in writing.

The requirements of the law with regard to appointments end here, but the dictates of prudence will see that as a matter of business all regular agents are appointed formally with a due regard to the qualifications of the agent and possible future misunderstandings.

Qualification in most cases is a question of business which must rest with the principal, but certain classes of agents cannot act unless duly qualified by law or by a revenue or other certificate; for example, solicitors, auctioneers, bailiffs.

THE AUTHORITY OF AGENTS AND SUB-AGENTS

The authority of the agent, as far as the principal is concerned, will, of course, be clearly gathered from a written appointment; but the authority may be supplied or enlarged by the conduct of parties, the nature of the employment or the necessity of circumstances, or by the subsequent ratification by the principal of an act not previously authorized by him. The authority of the agent cannot exceed the power of the principal; for example, the agent of a corporation with limited powers cannot validly contract in excess of those powers (see Chapter IV of this Part).

General Authority

The general authority of an agent gives him power to act in the ordinary way of business, but does not authorize him to take more than the usual risks, to incur extraordinary expense, or use unreasonable means. A reasonable custom will bind a principal on the agent's contract, and an agent who acts in good faith will be justified, although the terms of his appointment or his instructions are not clear and specific. As regards his principal, the agent has no authority to exceed any express terms of his appointment.

An agent appointed by deed, that is, under a power of attorney, must conform strictly to his appointment, and those who contract with him should examine the instrument to make sure that he has the necessary authority. He should exercise the power in the name of the principal, or in his own name, with words to show that he acts for another and is signing as agent. A general power of attorney, like a general agency, gives authority to perform incidental acts; but what is within the scope of the power must always be a question to be decided upon the particular facts of each case.

Limited Authority

Care should be taken by the principal, on the other hand, in the manner in which the authority is conferred, or the way in which the agent is allowed to act, to give notice to third parties of his limited authority. For example, an agent is appointed to sell goods on commission, and not authorized to receive payment; the invoice for the goods should state that payments are only to be made to the authorized collector or to the head office; otherwise by custom the agent may receive

money which may discharge the debt, although the money does not reach the principal.

An agent appointed to sign for the firm who is not a partner is appointed under what is called a procuration, and usually signs "per proc." or "per pro." the firm with his own name. Such a signature is notice to everyone that the agent has only a limited authority defined by the terms of his appointment. On the other hand, the words "per pro." are often loosely used in business, and mean no more than the representation of a clerk or servant who has no special authority other than to sign an informal acknowledgment.

Implied Authority

A person deals unreservedly with an agent, known to him to have a limited authority, at his peril; but the actual authority of an agent, as regards third parties who have no notice of any limitation imposed upon him, may be immaterial, if the act of the agent is one reasonably within the scope of his employment. For example, a manager who is authorized to borrow money for the firm may bind his principals, although he, in fact, is, unknown to the other party, borrowing money for his own purposes.

As regards third parties, therefore, the authority which an agent has is not necessarily that which is actually conferred upon him by his principal, but that which he is believed to have, with due regard to all the circumstances, the nature of his employment, and the acts which he is called upon to perform.

1. Authority may be implied from the course of conduct and from the employment of an agent in ordinary acts incidental to his engagement in completion of the bargain. But this implication does not cover acts which have been carried out subject to conditions not authorized.

2. From the employment of a general agent authority for incidental acts may be inferred, but this again will depend upon the nature of the duties and the act in question.

3. *Special Classes of Agents.*—The employment of certain classes of agents implies an authority to do all acts which are by custom performed by such agents; *e.g.* insurance agents, factors, auctioneers.

The following case well illustrates the effect of the law that a mercantile agent with possession of the goods has the power of disposition or pledge. The agreement was entered into between two persons for the sale of goods on the following terms:—

"I acknowledge that I have had from you on sale or return the goods entered up to this date in the book called 'Goods sent to Mr. F.', which is in your possession and which I have examined, and I admit that I have to account to you for such goods. The goods I admit are your property, and to remain so until sold or paid for, they being only left with me for the purpose of sale or return, and not to be kept as my own stock. The goods I have from you are to be entered at cost price, and my remuneration for selling them is agreed at one-half the profit, *i.e* I retain one-half of the difference between the price at which I sell each article and the cost price of it, and immediately I receive the price of any article sold I am to remit to you the cost price and one-half of the profit as above. It is clearly understood you have no interest in my business, and I have none in yours, and that no partnership of any kind is existing or to exist between us, and that any goods I may have from you at any time are to be returned on demand."

The writer of this letter pledged some of the goods to secure advances to a person acting in good faith, and did not account for the proceeds to the owner. It was held that he conferred a good title upon the pledgee, as the latter took the goods from one who was not a person who received them on sale or return, but an agent for sale, and as a mercantile agent he had authority to dispose of or pledge the goods, although such action was quite contrary to the understanding between the two parties to the original arrangement (*Weiner v. Harris*, 1910).

4. *Married Women.*—An important class of agency is that which is in some cases implied in married women on behalf of their husbands. This is an agency which leads to transactions of the greatest frequency with tradesmen; but the agency only extends to the supply of necessaries for the wife and the household according to the state of life in which the parties live.

If a married woman engages in any trade herself, her acts are presumed to be in reference to that separate trade and to her own estate. In such a case the husband is not liable unless it is proved that credit was given to him.

Where a man and woman are living together as husband and wife, the wife or reputed wife who orders suitable necessaries pledges the husband's credit; but she cannot borrow money on his credit even to spend on necessaries. If it can be shown that her authority has been countermanded by the husband, or that she is amply provided with necessaries or money by the husband, he is not liable. It is essential to a successful claim against him that credit should have been given to the husband and not to the wife.

There is therefore an implied authority in the wife as manager or housekeeper for her husband to bind her husband on a contract for suitable

necessaries with anyone who has not had express notice limiting such authority.

When the husband and wife are not living together enquiries should be made, for a person seeking to charge a husband on a contract made by the wife must then prove the husband's authority. If a judicial separation has taken place, the husband is only liable to the extent of the alimony decreed, and not otherwise for any necessaries supplied to his wife; and when there has been a separation under agreement, the husband allowing the wife an income, he is not liable on any contract made by her. On his default in paying the allowance she has the ordinary authority to pledge his credit for necessaries, and this rule applies if she is separated without an agreement for an allowance, unless she has adequate means of her own.

If a wife has the custody of the children of the marriage, necessaries for their use are treated as necessaries for herself.

A wife living apart from her husband without his consent has only authority to pledge his credit if he has been guilty of legal misconduct. In such a case she has authority to pledge his credit for necessaries, for costs of proceedings against him, and for provision for the children of the marriage living with her.

A wife who is deserted by her husband or living apart from him on account of his misconduct has authority to pledge his credit for necessaries for herself and children lawfully in her custody, as well as for the costs of proceedings against him.

If a wife has been guilty of misconduct, she has no authority to pledge her husband's credit, unless he has condoned or connived at such misconduct, or after knowledge of it has held her out as his agent.

5. *Children.*—A child's authority to pledge the parent's credit is never presumed, but must be proved either from express authority, or from such circumstances as justify the inference. In such a case the jury are judges of whether the parent had sanctioned the order; as where a father had seen his son wearing the new suit for which it was sought to charge him.

General Instances of Implied Authority

The manager of a shop has authority to do all acts which reasonably fall to the lot of such a manager, although his authority may be privately restricted. An agent who is employed to secure offers for a house or business is not authorized to conclude a binding contract for sale, but merely to bring proposed buyer and seller together. An agent authorized to receive money is only authorized to take payment in cash, although custom may make payment by cheque allowable.

If an agent in carrying out his instructions commits a wrongful act, his principal will be bound by it, as where a railway servant acting within the scope of his authority commits an illegal arrest. But to bind the principal the act must be of a reasonable nature. The manager of a restaurant is justified in giving a person into custody on the charge of being disorderly on the premises, but not for a dispute on a bill. If the act is in itself illegal, no authority can justify an agent in committing it.

Ratification of Acts not Authorized

Although in ordinary cases the authority of the agent is express or implied by the act of the principal, yet, under certain circumstances, an act by one person may be subsequently ratified by another person so as to constitute the relationship of agency.

Acts which may be Ratified

It is essential that such an act should at the time have been done by a person, not on his own behalf, but on behalf of another, though that other had not given his authority. The agent must be intending to act for an existing principal who is either named or can be easily ascertained at the time. If the agent professes to act on his own behalf, although he intends to give the benefit to another, the act cannot subsequently be ratified. For example, where a member of a volunteer corps entered into a contract in his own name, it was held that such a contract could not subsequently be ratified by individual members of the corps.

There must be a principal actually in existence and capable of himself contracting. An infant, therefore, cannot ratify a contract made on his behalf except it is one for necessaries. A more important class of contracts are those made by a promoter in anticipation of the formation of a company with persons who it is intended shall have a contractual relationship with the company when formed. Such contracts cannot be ratified by the company when it comes into existence. (*Kelner v. Baxter*, 1866). A new contract must be entered into if the obligations are to become binding, although in certain cases through receiving the benefit of the contract or partly performing it a company may incur liability, provided such a contract was within its powers. The formation expenses of a company which are

not taken over by a subsequent contract are payable by the individual promoter, except in cases where a private Act of Parliament has provided for their payment, or where the Articles of Association have so stipulated and the claimant is a member of the company. Outsiders cannot claim such a benefit under the Articles of Association. A person, therefore, who makes a contract, intending to bind some principal not yet in existence, as a company in embryo, is presumed to have acted for himself, and unless there is a clear indication shown to the contrary, he must remain liable himself on the contract. It has been held that a person who agreed with a promoter to take up a certain number of shares in consideration of his receiving the post of secretary to the company, at an agreed remuneration for a certain term—an inducement often held out to attract capital—could not enforce that agreement against the company, and could only recover for work actually done on the company's behalf.

Acts which could not have been done by the intended principal, and therefore cannot be ratified subsequently, are also of that class of transaction which lie outside the powers of a public company or public authority limited by statute. If, for example, the Articles of a company do not authorize the payment of dividends out of capital, it is impossible for the shareholders to make valid by ratification the payment of such a dividend by the directors But an act may be outside the powers of the directors, and yet within the general powers of the company. Such an act in that case when done by the directors can be validly ratified by the shareholders in general meeting, either formally or even by conduct after full knowledge has been shown. (See, further, Chapter IV of this Part.)

The contract of agency which may be ratified may refer to one act or to a series of acts, provided that the acts were capable of being done by the principal himself. It follows that acts which are illegal in themselves cannot be ratified; for example, an illegal execution by the sheriff's officer, or a forged document. But if an unauthorized illegality occurs in carrying out legal instructions, as a trespass or assault committed by a servant in the ordinary discharge of his duty, the employer may ratify the act without making himself responsible for the illegality of the servant. The receipt of money, the proceeds of an illegal distress, will not make the principal liable unless it is shown that he had knowledge of the character of the act. Provided that an act is ratified within a time which, having regard to its nature, is reasonable, it is not material that there has been a change in the circumstances, such as a loss under an insurance policy, or a repudiation by the third party. But a contract must be ratified before the time for its performance; before money paid has been returned to the party who paid it; and at such a time as will not prejudice a third party.

Mode of Ratification

Although the ratification need not necessarily be an express one, except in the case of a deed which can only be ratified by deed, it must be clear and unambiguous. A person must ratify, either by a clear *adoptive act*, or by *acquiescence* in the state of affairs after he has become fully possessed of a knowledge of all the facts.

Acts which indicate the adoption of the contract are such as the receipt of purchase money in the case of a sale, coupled with full knowledge of the facts.

It is sufficient to prove a ratification that a person has acquiesced in such a state of affairs as had led him to his knowledge to be regarded as principal. Acquiescence after the act must, as in the case of adoption, relate to a contract which was within the powers of the principal in existence at the time, and the acquiescence must be clearly relevant to the particular acts, and not capable of being referred to another series of acts.

Effect of Ratification

Provided that an act is validly ratified, the relationship of principal and agent is as clearly constituted as if it had been created previously; except that it does not divest any third party of any right accrued at the time of ratification; or give the principal a right of action in respect of any breach before ratification. It follows, therefore, that the agent is relieved from personal liability on the contract and from responsibility to his principal for any breach of duty in acting in excess of authority. The principal must perform the contract himself, and is also liable to the agent for his commission, remuneration or other expenses, and indemnity.

Delegation of Authority

The strict rule of law is that an agent cannot delegate the duties entrusted to him by the principal to another person, wholly or in part, without express authority from his principal; but, as a matter of business convenience and custom, it is the commonest thing for an agent to employ others in the discharge of the duties of the

agency, and even entirely to devolve upon others the discharge of those duties. There are cases, however, in which the strict rule of law must be observed; but in practical business the exception is greater than the rule, and it will be convenient to state the cases where delegation cannot take place.

Duties which cannot be Delegated

Where reliance is placed upon the personal skill and competence of the agent, or any personal trust is reposed in him, or where a professional agent is employed, then his duties cannot be transferred to another person, except under urgent necessity. Duties in the nature of a public character cannot be devolved upon others under any circumstances. A member of a public body cannot appoint a substitute, and Parliamentary powers which have been given to a public corporation cannot in the ordinary way be handed over to another. A distinction must be drawn, however, between cases where there has been a delegation of duty entrusted to an individual or body of persons to another, and cases in which the duty is discharged in the manner prescribed through another person or body of persons. The Articles of Association of a Company or the Act of Parliament conferring powers on a local authority may prescribe that certain acts shall be done on behalf of the corporation by certain committees or individuals. In this case there is no delegation, but merely a performance of the duties in the manner prescribed. Directors of a company can only delegate their duties in accordance with the Articles of Association, which may provide either for committees of directors, or for certain duties being discharged by a managing director, or by a manager or other official person.

Employment of Sub-agents

Generally speaking, an agent may without being specially authorized by his principal employ a sub-agent in carrying out acts where no special skill or discretion is required, or in assisting in subordinate acts in connection with the main employment, and where the employment of another is in accordance with the reasonable custom and usage of trade and it is not expressly forbidden by the terms of the agency.

Without a sub-agency arising at all, the employment of others by the agent is, of course, admissible, the agent in such case retaining the control of the business and accepting full responsibility for its discharge. A solicitor entrusted with a case does not himself personally conduct every transaction; an estate agent will not without the assistance of his staff be able to conduct all the necessary acts in connection with his agency. In such cases there is no sub-agency, but merely the carrying out of the transaction by the agent with the assistance of his servants.

Again, a sub-agent can be employed where such employment is known to the principal at the time, or he subsequently acquiesces in it; or where the necessity of the transaction itself leads to the employment, as in the case of a contract involving representation abroad, or the employment of some agent specially qualified at home, *e.g.* a stock broker.

The delegation of authority arising from necessity can only take place under urgent requirement; the employment must be no more than is absolutely necessary, and the sub-agent must be chosen with the utmost discretion; or the agent will not escape personal liability for his acts.

Trustees are now permitted by statute to employ bankers and solicitors for the receipt of moneys, but trust funds cannot be left in the hands of these agents without the liability attaching to the trustee. (See also Chapter XX of this Part.)

Relations of Principal and Sub-agent

As a rule there is no contractual relationship between the sub-agent and the principal, a sub-agent being merely accountable to the agent, who is his principal. Where the principal has acquiesced or intervened in the appointment of the sub-agent the sub-agent and principal come into direct relationship. Sub-agents may therefore be of three classes: (1) Those employed without the authority of the principal, whose acts do not bind him; (2) those employed with the authority of the principal, but without his intervention, and who, therefore, have no direct relationship with him, although their acts bind him through the agent; (3) those employed with the principal's authority and knowledge and directly related to him. The agent remains liable for any act or default of the sub-agent in the first class, but not in the second and third classes, unless he has been guilty of negligence in the engagement of the sub-agent.

In the ordinary course the sub-agent must therefore look to the agent for his remuneration; and even where an agent delegated his entire duties, it was held that the person who performed them was not entitled to recover for his services in an action against the principal; and conversely, the principal has no right of action against such a sub-agent, between whom and himself there is no "privity of contract".

DUTIES, LIABILITIES, AND RIGHTS OF THE AGENT

Duties and Liabilities to the Principal

Every agent must use reasonable care and diligence and the skill which he is presumed to have in carrying out the instructions of his principal. This is so whether he acts gratuitously or is paid, but a greater amount of care, skill, and diligence is demanded from the paid agent. An unpaid agent is liable for gross negligence in carrying out his undertaking, and what is under the circumstances gross negligence must be determined in each case. Negligence generally means a want of reasonable care and skill, having regard to the nature of the employment, the undertaking of the agent, and all the circumstances of the case Gross negligence is negligence of a greater degree than this. A paid agent is grossly negligent if he fails to exercise the reasonable care and skill which are demanded from persons undertaking similar services; except only in the case of a barrister, who by a fiction of law is supposed to receive fees as an honorarium. For example, a broker who is employed to sell goods must make an estimate of their value, so that they shall not be sacrificed. An insurance broker must effect a policy on goods which he has undertaken to cover within a reasonable time. A house agent must not let a house to a tenant without making reasonable enquiries as to his solvency. A public-house broker employed to purchase must ascertain the earnings of the public-house.

If an agent acts in accordance with his instructions and with discretion, using his best judgment, he is not liable for a mistake An agent is not liable for loss ensuing who acts in accordance with the usual and reasonable course of business and custom of his trade; but he will be responsible for loss or fraud resulting from his negligence, as for the loss of moneys which he has paid into his own bank when it was his duty to pay them into his principal's bank. If an agent is instructed to prepare a contract, it is his duty to make it in such a form that his principal can sue upon it. Although in exceeding his instructions an agent may sometimes, nevertheless, bind his principal, he commits a breach of duty and is liable therefor to his principal; even though his disobedience is with the intention of benefiting his principal. Substantial compliance with the principal's instructions, however, is generally sufficient.

Claims to Property of Principal

An agent cannot acquire a title against his principal through the receipt of rents or by other acts of ownership, or by the possession of premises, even if he is carrying on an independent business. An agent cannot set up the rights of third parties against his principal in respect of any property held by him for the principal, except where a third person is entitled and he had no notice of the claim when he agreed to hold goods or chattels for the principal. In such a case the agent may, by the authority of such person, set up his title.

Accounts

An agent must keep accurate accounts, and always be ready to produce them for the principal's inspection; otherwise he will be chargeable with interest on the balance found to be in his hands. For the inspection of the books, a principal or partner may appoint a suitable person. The agent must not mix his own property with that of the principal, at the risk of being called upon to prove his own claim as against the principal's. An agent is not liable for interest if he has never been called upon to account, and if the money has been left in his hands without the duty of investing it, unless he has received money improperly or in breach of his duty. The agent's duty is to pay money over to the principal which he receives on his behalf. He cannot appropriate it even against a private debt due to himself. If he is permitted to retain money for investment he is in the position of a trustee.

In an action for money received on behalf of the principal, the agent cannot set up a defence that it is claimed by a third person, although in a complicated case he may have a right to have an account taken. Even though the money was received on behalf of the principal on account of a betting transaction or an illegal contract, the agent is bound to pay it over, provided that the agency itself is not illegal. If, however, money is obtained wrongfully or by mistake of fact, or on a rescinded contract, or on failure of consideration, the agent may show that he has repaid it.

An agent may take from the principal's money his own remuneration, and anything expended by him with authority, express or implied, in the business of the agency. The accounts of an

agent who occupies a position of trust may be taken in a Court of equity; and on failure to comply with an order of Court he is liable to attachment. The usual remedy against an agent is an action at common law. Under ordinary circumstances, a settled account is a good answer by the agent, but even a settled account may be surcharged and falsified, and, on proof of fraud or undue influence, may be re-opened.

Agent's Interests

An agent must never allow his duty to his principal to come in conflict with his own interests. He may not sell his own goods to, or buy the goods of, his principal. A principal may repudiate a contract in which the agent is interested, or he may adopt it and make the agent account for his profit. A director or promoter of a company stands in the same position as regards his company. Any custom of trade or market at variance with this rule would not be upheld by the Courts. An agent who takes an advantage to himself when employed, for example, to purchase or sell a property, holds the profit as trustee for his principal. The agent in any transactions with his principal must make full disclosure and show that the principal is in no way under his influence. The burden of showing that the principal knew all the facts is upon the agent, if any transaction is subsequently questioned; but a principal must take proceedings within reasonable time. The gifts of a principal to his agent are viewed with suspicion, and it must be shown that they were made at arm's length, or on independent advice.

Bribery and Secret Commissions

An agent or sub-agent can always be called upon to account for any secret profits earned by him in the course of his agency. It is immaterial that the principal suffered no injury, or that the agent himself took additional risk. If, however, it can be shown that the principal was aware that the agent received a remuneration which was customary, the circumstances are altered; and if there was nothing to mislead the principal, such remuneration is not corrupt. Secret profits can be recovered by the principal. If such profits are in the nature of bribery, the agent can be dismissed without notice. Partners, receivers, and directors and officers of a company must also account for profits made by them out of the business, unless the other parties have consented, and were competent to consent, to the appropriation of such profits.

The fraudulent or corrupt receipt by the agent of secret remuneration precludes him from claiming his commission from his principal. He is accountable for the amount of the bribe, the interest thereon, and also for any loss which the principal may sustain.

An agent may receive a commission without fraudulent or corrupt intent, in which case, although he may not retain it, he is not deprived of the agreed remuneration from his principal; and if the transactions are separate, and in some cases a secret commission has been paid and in others not, the agent is not debarred from recovering his commission upon the latter transactions.

An agent may in certain cases be proceeded against criminally in respect of bribery. A member, officer, or servant of a public authority accepting a bribe is liable to proceedings under the Public Bodies Corrupt Practices Act, 1889. A later Act, the Prevention of Corruption Act, 1906, makes any agent who corruptly accepts or obtains, or agrees to accept, or attempts to obtain, any gift or consideration as an inducement or reward for doing or forbearing to do, or having done or forborne to do, any act, or for favouring or disfavouring any person in relation to his principal's business guilty of a misdemeanour. The giver or offerer of the bribe is also guilty. An Association, known as the Bribery Prevention League, with offices in London, exists for the purpose of enforcing the provisions of this Act, for the measure was one unfortunately somewhat in advance of public opinion.

No agent, unless with the consent of his principal, either during or after the determination of the agency, may use prejudicially to the principal any information which came to him in the course of the agency through knowledge of the principal's affairs. A manager of a business who surreptitiously copies from the order book a list of names with the intention of soliciting orders after leaving his employment in that firm is guilty of a breach of his engagement and may be restrained from making use of the list. This does not, however, apply to partners. (But see also Chapters III and XVI of this Part.)

Agent's Duties to Third Parties

Contrary to the general rule, agents are sometimes personally liable to third parties on the contract. Special classes of agents accept liability, as an insurance agent for the premiums on policies he has effected, a stock broker under the rules of the Stock Exchange, or an agent who has taken a *del credere* commission, that is, one who guaran-

tees the performance of the contract to his principal. Other agents are liable only if they have contracted personally.

Cases where the Agent Contracts Personally

1. An agent contracting in the United Kingdom on behalf of a foreign principal should make it clear that he is not contracting personally, or he may be held liable.

2. An auctioneer who sells for an undisclosed principal, or a shipmaster personally signing a bill of lading in his own name; and

3. An agent who executes a deed in his own name, are personally liable; also

4. The acceptor is liable on a bill of exchange if drawn on the acceptor in his own name; but otherwise if drawn on a principal, and an agent accepts with the qualification. The mere description of the signature in the first case as that of an agent does not relieve him from personal liability. An agent who otherwise without qualification signs a bill of exchange, promissory note, or cheque is personally liable upon it. (See also Chapter VII of this Part.)

5. An agent who has signed in his own name without indicating that he signs as agent may be held personally liable if it appears that he intended to make himself liable. The intention in such a case not to contract personally must be clearly shown, and merely describing himself as agent may not relieve him. Where a clear intention to contract as agent is shown, even when there is a foreign principal, it may disprove the ordinary assumption in such cases that the agent was making himself personally liable. Although parol evidence is not admissible to contradict a written contract, yet it may be available in defence; or, on the other hand, to show custom or usage which, notwithstanding a qualified signature, imposes a personal liability on the agent. In such cases the Court has to decide on the intention at the time of contracting by construction of the written document.

6. Where clear proof is given on a verbal contract that the agent contracted personally; or where a person contracting as agent is shown to have been in fact the principal.

7. Where a person contracts as agent for a principal who does not exist at the time, the person contracting is held to be liable, because otherwise no effect could be given to the contract. (See, further, Chapter IV of this Part.)

8. Where the agent has warranted his authority, and has induced third parties to contract or act on the supposition that he is authorized as agent. A person professing to act as agent impliedly contracts that he has authority and is liable for breach of that implied contract, even though it is true he originally had an authority which has come to an end without his knowledge or means of knowledge (*Yonge v. Toynbee*, 1910; *Simmons v. Liberal Opinion*, 1911). The measure of damage is the loss actually sustained in consequence of the representation, which may include loss of profit on the contract and expenses. A person may be liable where he has quite innocently enabled another to make a misrepresentation; as where a transfer of stock took place on a forged transfer, the circumstances were such that the defendant had impliedly warranted the identity of the transferrer and was liable for the loss which the bank had had to make good.

9. Where a person is entitled to recover money, an agent is personally liable to repay it if credit was given to him, or if he obtained it through fraud or other wrongful act, or even if, although not party to the fraud, he is served with a notice demanding repayment before he has in good faith appropriated the money to his principal.

10. An agent may become accountable to third parties for money of the principal which has been assigned or charged, notice having been served on him; or if he has been directed by his principal and has agreed with a third party to pay or hold the money for the latter.

11. An agent is personally liable for any crime he commits and for his wrongful acts as if he were acting on his own behalf, unless the wrong is covered by the authority of the principal. For the wrong of a public agent, an act of state is no excuse, unless it is an act against a foreign state which is subsequently ratified by the agent's own government.

An agent in possession or in control of goods with notice of claims by the true owner, who deals with them without the authority of the true owner, or unreasonably declines to hand them over to the true owner on demand, is guilty of conversion.

12. An agent is liable for a breach of trust to which he is knowingly a party; but not for a breach of trust on the part of his principal of which he was ignorant; as where a banker, without knowledge of a trust, receives money and in the ordinary way places it to the current account of the trustee.

Agent's Right to Remuneration

An agent's right to remuneration depends upon the express or implied terms of his employment. All regular employment of agents will naturally be made by agreement in which the remuneration

will be fully provided for, and then only the terms of that contract can be regarded. No implication or custom can vary the terms of such a written agreement. But an agent who is not so appointed, and who carries through the business which he is instructed to do or which has afterwards been adopted by his principal, is entitled to remuneration implied from the circumstances, or on what is called a "quantum meruit", that is, so much as in the opinion of the Court or jury the services were worth.

The remuneration which is implied in the absence of agreed terms will be one according to the nature of the duties and the standing of the agent. It may be payable by way of a fee in a lump sum, or by way of commission at so much per cent.

A commission agent, whether he is entitled to commission on one completed transaction or on a series of sales, as in the case of a traveller, is, unless otherwise provided, only entitled to remuneration by commission on completed transactions. The transaction must have been brought about through his agency and while acting within the scope of his authority. He is not entitled to a "quantum meruit", or any remuneration not specially agreed, in respect of work he has done which has not resulted in a complete transaction. On the other hand, he may be entitled to his commission, although he himself has not carried the transaction through, provided that on his introduction the business has been completed. It will be sufficient for him to prove that after his introduction business ultimately resulted; but after the termination of the agency, as a general rule, an agent is not entitled to commission on business arising or orders sent direct to his principal by third parties, although doubtful points on this question often come up for solution. An agreement should therefore clearly stipulate that the termination of an agency puts an end to all claims for commission on future business; otherwise friction is sure to ensue.

If the agent has done all he is called upon to do, and has brought the parties into contractual relationship, he is entitled to his commission or remuneration. Where the terms of the employment are that the commission shall be paid on a certain event, the agent cannot claim until that event has happened. He cannot claim remuneration for work negligently done so that it is useless to the principal; and where, through no fault of his principal, the transaction does not go through, he has no claim for commission.

If the principal refuses to carry out the contract, and so prevents the agent from earning his remuneration, the latter is entitled to claim damages. When an agency has been revoked by the principal, there may be a question, depending on the terms of employment, custom, or usage, as how far the agent is entitled to be paid for work already done.

An agent cannot claim extra remuneration for services which are properly included in his duties, nor for services which are outside the scope of his employment in connection with acts which are not ratified by his principal. He may lose his remuneration through unreasonable delay, misconduct, bad faith, or gross negligence. Agents who require a special certificate to act (e.g. solicitors, auctioneers) cannot recover remuneration if they act without that authority; marine-insurance brokers cannot claim commission on an unstamped policy. Any promise to pay money by way of commission or reward in respect of any gaming or wagering contract is void under the Gaming Act, 1845.

A *del credere* agent is entitled to be paid his commission immediately upon entering into the contract of guarantee.

A sub-agent, unless he has been brought into direct relationship with the principal, must look for his remuneration to the agent.

Agent's Right to Indemnity

An agent is entitled to be indemnified by the principal against all loss and expense to which he has been put in carrying out his instructions. The right of indemnity covers expenses which have reasonably been incurred, e.g. actual out-of-pocket costs in an action which an agent has properly undertaken in his client's interests. When an agent is sued by his principal he may set off any such claim against the principal.

The agent is also entitled to be indemnified against any loss which he has sustained through acting, within the limits of his authority, in accordance with any recognized trade custom or rule of a particular market which is a reasonable one.

An agent loses his right to indemnity if he engages in any unlawful or wagering transaction, or where loss is incurred in consequence of his own negligence or default.

Agent's Lien

An agent has what is called a possessory lien on particular goods, the property of the principal, which are obtained in the course of his employment, for the money he has expended on behalf of the principal, as well as for his own remuneration, losses, and liabilities. An express contract or a custom of trade may give an agent a general lien on all the property of the principal in his hands.

As against third parties the agent's lien is only good to the extent to which against them the principal has power to create a lien, and such a lien is generally, in the case of goods, subject to the claims of third parties available against the principal at the time. In the case of money and negotiable securities, the agent's lien is only affected when he had notice of the rights of third parties.

A sub-agent employed by the authority, express or implied, of the principal has the same right of lien against the principal as if the goods had been the property of the agent, a right not affected by a settlement between the principal and agent.

An agent may surrender his right of lien by agreement or by conduct, by taking other security, or by parting with the goods, unless he was induced to part by fraud.

Lien is not affected by the bankruptcy of the principal or by the fact that the claim is statute-barred. (See further as to "Lien", Chapter XII of this Part.)

Other Rights of Agent

The agent who makes himself personally liable on a contract for the price of goods is in the position of an actual buyer, and the property is in him until he has been paid the price by the principal. He can dispose of, or stop, the goods in transit before they come into the hands of the principal or his representative, as in the case of buyer and seller. (See also Chapter VI of this Part.)

An agent who has contracted personally, or who has a special property in or a lien upon the goods, or an interest in the performance of the contract, may sue personally, if the principal has not intervened.

An agent who claims no interest in goods other than for his costs or charges or lien only as against the owner may interplead even against the principal in the event of cross claims being made upon the goods. (See also Chapter XXVI of this Part.)

THE PRINCIPAL AND THIRD PARTIES

Principal's Rights and Liabilities

A principal has rights and liabilities in regard to third parties which flow from the acts of his agent. Questions, as we have seen, arise as to what acts of the agent bind him and to what extent he is liable on those acts The principal is liable for the acts of the agent which are within his actual authority, even if the authority is exercised fraudulently. A principal is also liable to those dealing in good faith with the agent, and without notice of any limitation of his authority, for acts which are within the apparent scope of that authority. An insurance agent may be authorized for the purpose of underwriting policies and carrying on the ordinary business in connection therewith at Lloyd's in the name and on behalf of another person. If such an agent in his own interests and in abuse of his authority underwrites a policy of guarantee in his principal's name, so long as the assured party is acting in good faith and has no knowledge of the existence of the written authority or of its limited terms, the principal is bound on the policy, and the motive with which the agent executed it is immaterial (*Hambro v. Burnand*, 1904). If a promissory note is signed or a bill accepted in blank and given to an agent with authority under certain conditions to fill it up and convert it into a negotiable instrument for a certain amount, and the agent fills it up in breach of those conditions and for a larger amount, and negotiates it to a third party who takes it in good faith and for value without notice of the special circumstances, the principal is liable to the holder of the bill or note for the amount for which it is filled up. (*Lloyd's Bank v. Cooke*, 1907.) But if an agent has no authority to fill up or negotiate such an instrument except on receipt of definite instructions from his principal to that effect (*Smith v. Prosser*, 1907). If the person taking such a note has knowledge of the circumstances under which it is made, the principal would not be liable. A bank is not liable for statements made as to the credit of a third party by its manager.

An agent cannot make a principal liable for representation as to the credit of a third party, owing to the statutory necessity for the signature of the party to be charged (see as to "Suretyship", Chapter VIII of this Part).

A principal is under ordinary circumstances only liable for the acts of his agent which are outside the apparent scope of his authority or employment when they are specially authorized by him. A principal is not liable for any unauthorized act done by an agent when notice of want of authority has been given to the third party. In certain cases third parties are deemed to have this knowledge owing to the fact of public registration, as in the case of the regulations of public companies. In other cases the form of the agent's signature is, as we have seen, notice of limited authority.

The principal is liable for the acts of a person who by words or conduct he has held out as his agent, so that other persons have been induced to contract with him in that belief. A person may also be held out as the agent of another by being entrusted with property or the possession of some document of title on which to raise money or give security for the true owner. To a person acting in good faith on such an agent's representation the principal is liable, but not in regard to a forged document.

An agent who discharges an existing debt or liability, or who for any other valuable consideration pays or negotiates money or negotiable securities entrusted to his keeping, to one who takes in good faith and without notice of defective authority on the part of the agent, effects a valid payment or negotiation. For example, a broker entrusted with a document payable to bearer who pledges the scrip as security for a debt owing by himself to a person taking it in good faith and without notice confers a good title as against the true owner to the extent of the pledge. (*Goodwin v. Robarts*, 1876.) A banker acting in good faith without knowledge that any securities are the property of a broker or that he has authority to pledge them, or otherwise, who makes no enquiry but in good faith receives such securities in pledge, acquires a good title against the principal to the extent of his advance. (*London Joint Stock Bank v. Simmons*, 1892.) The test is whether there were circumstances which ought to have created suspicion.

An agent selling goods in market overt according to the custom of that market gives a good title to the buyer acting in good faith and without notice of any want of authority. A mercantile agent permitted by the owner of goods to have possession of goods or documents of title to goods may validly pledge, sell, or otherwise dispose of the goods in the ordinary course of his business to any person acting in good faith and without notice. A consignee of goods has a lien for *bona-fide* advances made to the apparent owner. (See also Chapter VI of this Part.)

A principal who is liable on a contract may sue or be sued in his own name, unless the terms of the contract provide otherwise, except in the cases of foreign principals who are not disclosed and in those special cases where an agent has signed a deed, accepted a bill of exchange, or signed a promissory note or a cheque in his own name.

Wrongful Act of Agent

A principal, other than the Crown, is not only liable on the contract made by an agent, but is also liable for loss or injury sustained by a third person through the wrongful act or omission of an agent acting on his behalf—the agent, of course, being himself liable for his wrongful act. An exception has been created in the case of Trade Unions by the Trades Disputes Act, 1906; no action will lie against a Trade Union (of masters or men) or any members or officials of the Union on behalf of themselves and all other members in respect of any wrong alleged to have been done by or on behalf of the Trade Union. (See also Chapter X of this Part.)

The liability of a principal for the wrong of his agent in the course of his employment will include liability for the money or property of a third person misapplied by the agent, and to a certain extent may include liability for wrongful or malicious acts of the agent committed on his behalf with or without his express authority. The general rule, however, that the principal is not liable for wrongs committed by the agent which are outside the ordinary scope of the employment usually applies to this case.

If a principal intentionally conceals from his agent material circumstances with regard to the business on which the agent is employed, so that the agent makes representations of fact which he believes are true, but which the principal knows to be false, the principal is liable as though the agent had fraudulently misrepresented the case. It is still a doubtful point at law whether the innocent misrepresentation of an agent, made without the knowledge and authority of the principal, imposes any liability upon the principal. The decision would turn upon the facts peculiar to the case, as the previous cases are in conflict.

Circumstances releasing Principal

A principal is released from liability if the third party has elected to treat the agent as liable on the contract, by obtaining judgment against the agent, whether satisfied or not; and the principal may be released through the third party giving credit exclusively to an agent who has contracted personally.

If the third party leads the principal to believe that he has given credit to the agent, or is looking to the agent as the person liable on the contract, and the principal in consequence deals with the agent on the supposition that the latter is discharging the obligation to the third party, the third party may lose his right of action against the principal. Regard in such cases will be had to all the circumstances, but it must not be assumed that delay on the part of a creditor in claiming against a principal is in itself sufficient to release the principal. There must be circum-

stances which show that the creditor has abandoned his primary remedy against the principal

Conversely, if a principal induces the third party to regard the agent as principal, a *bona-fide* settlement with the agent will be binding on the principal, and the third party can set up against the debt any right against the agent which had matured before he had notice that the agent was not the principal.

Effect on Principal of Agent's Admission or Knowledge

The admission or representation made by an agent which is either expressly authorized by the principal, or which is made in the ordinary course of his employment in the particular matter or in answer to an enquiry which was referred to him by the principal, will bind the principal as though made by himself.

Notice of any material fact or circumstance which comes to the agent in the course of carrying out the business on which he is employed, and which it would be his duty to communicate to his principal, as far as third parties are concerned, is deemed to be effective notice to the principal himself. This will not, however, apply in cases where the agent is a party to fraud on the principal, and the third party has knowledge of the fact that the agent intended to conceal his knowledge from the principal.

Property entrusted to the Agent

In ordinary cases where an agent makes a disposition of the principal's money or property which is unauthorized, the principal is entitled to follow it and recover it against the agent and third parties. Exceptions have been already noticed (p. 99). This right extends as against the trustee in bankruptcy of an agent (but as to this, see Chapter XI of this Part).

Goods entrusted to an agent for sale or disposition in the way of trade are privileged from distress while on the agent's premises. (See Chapter IX of this Part.)

THE DETERMINATION OF AGENCY

General Rule

An agency may be determined in various ways. In ordinary circumstances the completion of the particular transaction, the subject of the agency, or the expiration of the time for which it was agreed that the agency should continue, puts an end to the relationship of principal and agent. In other cases the determining event may be the destruction of the subject matter, or the happening of anything which it was agreed should determine the agency or of something which would make the continuance of the agency unlawful. The agency is generally, though not necessarily, determined by the death, lunacy, or bankruptcy of either the principal or the agent, or by the dissolution of a corporation. In other cases, agency may be determined by a sufficient notice of revocation or renunciation given by either party. Difficulties arise, however, as to the exact right of parties in all cases where the agency is not naturally determined.

If a house agent is employed to let or sell a property, and he lets the property, his agency is determined. Should he afterwards negotiate for the sale, he is not entitled to a commission, unless he can prove that he was also instructed to find a purchaser. (*Gillow v. Aberdare*, 1893.) The rule is applicable to all agents employed for a particular transaction and not for a period of time.

Exceptional Agencies

Although, in the ordinary course, an agency not given for a particular time may be determined at the option of either party, certain agencies can only be determined on condition. The agency is sometimes of a character that it would be unfair to the agent or third parties that it should be brought to an abrupt termination. In some cases the agent may have such an interest in its continuance, in others the agent may have contracted with third parties in such a way, that it would be inequitable that the agent's authority should be extinguished.

Where an agent is appointed by deed, or where he has given valuable consideration for his appointment, and he holds his agency for the purpose of realizing or securing any interest which he has himself in the agency, then the agency must not be determined until that security or interest has been effectuated; for example, if a power of attorney was given to effect the discharge of a debt, or if a factor has made advances on goods. But an agency is obviously not to be continued merely because the agent has an interest in its continuance, or even has a property in or lien upon the subject matter of the agency. Again, if an agent has entered into any liability in accordance with the terms of the agency, or has paid money away on behalf of his principal, or has a

right to sue on a contract made on behalf of his principal in accordance with his authority and is entitled to any lien or charge upon goods or money, the subject of such action, the agency can only be revoked on such terms as secure the position of the agent. Neither the death, lunacy, nor bankruptcy of the principal determines such an agency.

Powers of Attorney

Under statute law also, since 1882, powers of attorney, which are given for valuable consideration and declared to be irrevocable, or, in any case, declared to be irrevocable for a specified time, not exceeding one year, are irrevocable if they have been duly acted upon in favour of a purchaser for valuable consideration. The donor cannot revoke the power, either at all or during the time fixed, as the case may be, without the concurrence of the donee, nor is the power of attorney affected by the donor's death, lunacy, or bankruptcy. Any act done by the donee in pursuance of the power during the time fixed, if so limited, or at any time, if not, is effectual notwithstanding any act or defect of the donor. Nor does notice of any act or defect of the donor during such time prejudice either the donee or a purchaser.

An agent acting under a power of attorney is always protected when acting in good faith, although at the time, without his knowledge, the donor of the power may have died or become incapable or revoked the power.

In other cases the death, lunacy, or unsoundness of mind of either principal or agent will determine the agency, subject to any rights which may have accrued.

Bankruptcy

An act of bankruptcy committed by the principal within the three months next preceding the date of the presentation of the petition upon which the principal is afterwards adjudicated bankrupt revokes the authority of the agent; but if, in the ordinary course of transactions between principal and agent, authority is given for the protection of mutual dealings, the agency is revoked only on the agent receiving notice of such an act of bankruptcy, or when the receiving order is made. Third parties who have contracted with the agent without notice of any such act of bankruptcy, and the agent himself without notice, are protected in respect of payments or acts made or done before the receiving order is made. Bankruptcy of the agent may or may not revoke the agency. This depends on the terms of the agent's employment, or, failing any provision, is a question of fact in each case.

For example, if an agent is authorized to receive the purchase money of an estate, and to credit the principal with the amount in the account between them of mutual dealings, and the agent receives money after, but without notice of an act of bankruptcy by the principal, and before the date of the receiving order, the agent may retain the money and set it off as against the trustee in bankruptcy in respect of claims of his own. (See also Chapter XI of this Part.)

Termination by Notice

The determination of an agency, when not otherwise provided for, is effected by notice. The principal may give the agent notice or the agent may give the principal notice, without prejudice to any claim that either may have for damages. For example, an auctioneer's authority may be revoked by his principal at any time before the goods are actually knocked down. An agent employed merely to sell on commission may have his authority revoked at any time, notwithstanding the fact that he has made efforts and incurred outlay in the endeavour to sell.

Where an agent has been acting to the knowledge of third parties in the interest of a certain firm or other principal, notice should be given to the third parties of the determination of the agency; otherwise the principal may find himself liable for the continued acts of the agent as far as third parties are concerned. If, for example, an insurance policy has been effected through a local agent which provides that notice of any loss shall be given to a known agent of the company, effective notice to a person who has ceased to be agent may be given on the part of one who had no knowledge of the determination of his agency.

The determination of an agency from any cause should therefore always be brought to the notice of customers by a circular letter which may, at the same time, conveniently acquaint them of any new appointment and its terms. (See Part I, Chapter VI.)

SPECIAL CLASSES OF AGENTS

Auctioneers

(See Part I, Chapter XIII, and Chapter VI of this Part.)

Brokers

The term "broker" is a wide one, including many classes of agents in accordance with the commercial article of product in which they deal. Pawnbrokers have been separately treated (Part I, Chapter XIII and Chapter XII of this Part.) A broker is a mercantile agent with authority to sell goods without having the custody of them. He is a negotiator, while a factor is entrusted with the possession of the goods which he is offering for sale. We have, therefore, stock brokers (see Part IV), ship brokers (see Part VI), insurance brokers (see Chapter XIX of this Part), bill brokers (see Part IV), produce or metal brokers, and brokers of every description down to furniture brokers, who may not be brokers at all but dealers in their own goods.

A mercantile agent is one having in the customary course of his business as such agent authority either to sell goods, or to consign goods for the purpose of sale, or to buy goods, or to raise money on the security of goods.

Subject to the usage which prevails in the particular markets, brokers are all governed by the general rules of agency. A broker's entries in his books are evidence of the contract to bind each party, with or without the "bought and sold notes" sent to the respective parties.

Factors

Factors are mercantile agents like brokers, but, being entrusted with the possession of goods or the documents of title to goods, they have powers of disposition or pledge over the goods which brokers have not. We have already seen the effect of these rights when a disposition or pledge is made by a factor (see p. 99). The agreement may be made through a clerk or other person authorized in the ordinary course of business to make contracts of sale or pledge on behalf of the mercantile agent. Factors are bound to keep the goods entrusted to them with ordinary prudent care.

Commission Agents

A class of agents are known as commission agents from the fact that they invariably act on a commission basis for anyone who instructs them. They do not differ as a body from ordinary agents, but their engagement may be subject to the rules and regulations of the particular market in which they operate. From their name it is obvious that they are employed, not upon fixed terms of remuneration, but upon a scale of commission either agreed before or authorized by the exchange or market where they buy or sell. Like brokers they may or may not guarantee the solvency of their customers.

Estate agents have been noticed as a profession in Part I, Chapter XIII. Their operations may take place under an engagement by a principal on terms of remuneration and time of employment, or, as is more common, they may act on special instructions and a payment of commission based on the value of the property involved. A great amount of litigation ensues on the subject of commission agency, as it is often a nice question whether the agent has contributed eventually to the purchase or sale or not. The question has been already seen to depend upon general principles. Commission may be claimed and indeed recovered by more than one agent on the same transaction. If the exertions of the agent as duly authorized by the seller contribute in a material degree to the sale, commission will be payable. (*Walker v. Fraser's Trustees*, 1910.) The rate of commission in the absence of an agreement would be inferred from the circumstances, or by the recognized usage of trade. There is often a scale of charges set up by professional agents or by their society, but it does not follow that judgment will be given by the Court on this scale, unless it has been agreed by the principal or is reasonable in the particular case.

Shipmasters

(See Part VI.)

Solicitors and Counsel

Reference has been made in Part I, Chapter XIII, to the profession of the law, and the agency of solicitor and counsel is also dealt with in Chapter XXVI of this Part.

FORM OF AGREEMENT FOR SOLE AGENCY

THIS AGREEMENT made the day of 19 , between the Express Manufacturing Company, Limited (hereinafter called the principals) and Charles Ingleby (hereinafter called the agent) WITNESSETH THAT

(1) The principals appoint the agent as their sole representative in the county of Yorkshire for the sale of all the goods included in their trade catalogue for a term of three years, commencing on the first of September next [subject nevertheless to six months' notice on either side].

(2) The expenses of the agency, including travelling expenses, are to be borne by the agent, with the exception that an allowance shall be made by the principals of per annum (*this may be a percentage of the turnover or a fixed sum*) for actual expenses incurred, vouchers for which shall be forwarded to the principals.

(3) All orders shall be taken in the name of the principals and transmitted to their head office. Copies of all invoices shall be sent to the agent. The goods shall be sent out at the expense of the principals, who shall after accepting the order take all risks [*or*, and the agent shall indemnify the principals for any loss caused through the failure of any person with whom he has entered into a contract]. All accounts shall be payable direct to the head office of the principals, or to their collectors, and not to the agent.

(4) The agent's remuneration shall be a commission of per cent on the orders accepted by the principals, but commission shall be payable to the agent on all orders accepted from Yorkshire whether transmitted by him or not [with the exception of orders coming from the customers set out in the schedule to this Agreement]. The agent shall be entitled to receive a commission on orders transmitted by him from any district other than Yorkshire, provided that commission is not claimed by another agent or that an agreement is come to for sharing the usual agent's commission with that agent. In any dispute as to the division of commission between two agents, the decision of the principals shall be final.

(5) The agent agrees to employ all his time in the principals' interests, and not without the consent in writing of the principals, expressly given in each case, to represent any other firm or solicit orders for any other article, whether it be a competing firm or article or not.

(6) The agent undertakes that, during the currency of this agreement, he will to the satisfaction of the principals work the district assigned to him, by means of regular rounds or periodical visits or otherwise as may be agreed.

(7) The agent shall sell on terms as to credit, discount, delivery, &c., which are from time to time fixed by the principals, and shall not without special instructions accept any order on any other terms.

(8) The principals undertake during the continuance of this Agreement not to appoint any other agent in Yorkshire, or otherwise to solicit or accept orders from Yorkshire without first acquainting the agent of the fact [except as regards the customers set out in the schedule hereto].

(9) This Agreement shall at once be determined as far as the rights of the agent are concerned if the agent commits any fraud upon the principal, or any breach of this Agreement, becomes bankrupt, of unsound mind, or if on the certificate of two medical practitioners he is declared after three months' illness to be unfit to proceed with his duties.

(10) On the determination of this agency from any cause whatever, the agent shall cease to be entitled to any commission on any orders received subsequently from any customers in his district or elsewhere.

In Witness whereof we do set our hands the day and month first above mentioned.

Witness to the signatures of

.....[the principals]

Witness to the signature of

.....[the agent]

[AUTHORITIES.—*Smith*, "Mercantile Law"; *Bowstead*, "Digest of the Law of Agency"; *Wright*, "Principal and Agent"; *Evans*, "Principal and Agent" and "Commission Agents".

Scots Law: The institutional writers, *Stair*, *Erskine*, and *Bell*; the English authorities, generally; *Campbell*, "Mercantile Law"; *Brown*, Sale of Goods Act; *Green's* Encyclopædia of Scots Law.]

CHAPTER III

PARTNERSHIP

What is Partnership?—Relations of Partners to Third Persons—Relations of Partners to One Another—Dissolution of Partnership—Actions by and against Firms and Administration of Partnership Property—Limited Partnership—Form of Partnership Agreement.

That men should engage together in the hope of profiting by their joint labour is one of the most primitive instincts, out of which elaborate systems of commercial partnership have grown up in all countries.

The British law of partnership is one of those departments of mercantile law which has happily been codified by recent legislation; and where possible the laws of the United Kingdom have been assimilated. Practically the whole of the partnership law is contained in the Partnership Act of 1890, when allowance is made for the Statute of 1907, which legalized a system of partnership with limited liability. The latter is a subject which will require separate treatment. The non-legal aspect of partnership has been already noticed (Part I, Chapter III). The Partnership Act of 1890 codified the law on the subject for the United Kingdom. The law of Scotland is therefore identical with that of England, with the exception of that branch of it which relates to the bankruptcy of a firm and its partners, which is noticed under the head of "Bankruptcy". (See Chapter XI of this Part.)

WHAT IS PARTNERSHIP?

Partnership is the relation which subsists between persons carrying on a business in common with a view to profit, and "business" includes every trade, occupation, or profession. From partnership must be excepted the relationship existing between members of companies or associations (*a*) registered under the Companies Act; or (*b*) formed or incorporated under an Act of Parliament or by letters patent or Royal Charter; or (*c*) engaged in working mines within and subject to the jurisdiction of the Stannaries (see Chapter IV of this Part). The Companies Act, however, requires that any partnership existing between more than ten persons for banking, or twenty for any other business, should be registered under the Act.

Rules have been laid down for determining whether partnership does or does not exist. They are as follows:—

1. Joint agency, agency in common, joint property, common property, or part ownership does not of itself create a partnership as to anything so held or owned, whether the tenants or owners do or do not share any profits made by the use thereof.

2. The sharing of gross returns does not of itself create a partnership, whether the persons sharing such returns have or have not a joint or common right or interest in any property from which or from the use of which the returns are derived.

3. The receipt by a person of a share of the profits of the business is *prima facie* evidence that he is a partner in the business; but the receipt of such a share, or of a payment contingent on or varying with the profits of the business, does not of itself make him a partner; and certain cases are particularly to be noted which do not of themselves indicate partnership liability:

(*a*) The receipt by a person of a debt or other liquidated amount by instalments or otherwise

out of the accruing profits of a business does not of itself make him a partner.

(*b*) A contract for the remuneration of a servant or agent of a person engaged in the business by a share of the profits of the business does not of itself make the servant or agent a partner

(*c*) A person being the widow or child of a deceased partner, and receiving by way of annuity a portion of the profits of the business in which the deceased was a partner, is not by reason only of such receipt a partner.

(*d*) The advance of money by way of loan to a person engaged or about to engage in any business on a contract with that person that the lender shall receive a rate of interest varying with the profits, or a share of the profits arising from carrying on the business, does not of itself make the lender a partner; provided, in this case, that the contract is in writing and signed by or on behalf of all parties.

(*e*) A person receiving by way of annuity or otherwise a portion of the profits of a business in consideration of the sale by him of the goodwill of the business is not by reason only of such receipt liable as a partner.

It will be observed, therefore, that, although not conclusive as to partnership, receiving a share in the profits is evidence as to a partnership until rebutted; but a share in the profits received in certain specified ways is not to be taken of itself as indicating a partnership. The advance of money in return for a share of profits is one which presents a practical source of danger, and the strictest attention should be given to the proviso, and the written contract should be drawn up with the greatest care.

In the event of any person to whom a loan has been made upon such a contract, or of any buyer of a goodwill in consideration of a share of the profits of the business, being adjudged a bankrupt, entering into an agreement to pay his creditors less than twenty shillings in the £1, or dying insolvent, the lender of the loan and the seller of the goodwill are not entitled to recover anything in respect of the loan or the share of the profits, until the claims of the other creditors of the borrower or buyer for valuable consideration in money or money's worth have been satisfied. It is therefore clear that a person making a loan without security on a business venture can only do so safely on an agreement for the receipt of a fixed rate of interest. If he is to share in the profits he must first take care so to contract as not to incur the liability of a partner, and, secondly, he must take into consideration the fact that his claim may be postponed to those of other creditors in the event of difficulties. But if his loan is secured by mortgage or otherwise, the lender can nevertheless enforce his security in the ordinary way. A lender must always take care that he does not intermeddle with the business so as to be "held out" as a partner (see p. 115).

Firm and Firm Name

Persons who have entered into partnership with one another are collectively called a *firm*, and the name under which their business is carried on is called the *firm name*. The law of England does not recognize a firm as distinct from the members composing it; nor does it impose any condition upon the members as to what firm name they shall take, provided that there is no misrepresentation by trading under a name in the attempt to defraud the public into a belief that they are some other firm.

In Scotland a firm is a legal person distinct from the partners; but an individual partner may be charged on a decree or diligence directed against the firm, and on payment of the debts is entitled to relief *pro rata* from the firm and its other members. The laws of other countries sometimes impose conditions as to the use of trade names, which must indicate the constitution of the firm, or, if not, be registered as a firm name with the names of the partners. The right to a trade name is dealt with elsewhere. (See Chapter XVI of this Part.)

RELATIONS OF PARTNERS TO THIRD PERSONS

Every partner is an agent of the firm and the other partners for the purpose of the business of the partnership; and the acts of every partner who does any act for carrying on in the usual way business of the kind carried on by the firm, bind the firm and his partners; unless the partner so acting has in fact no authority to act for the firm in the particular matter; and the person with whom he is dealing either knows that he has no authority, or does not know or believe him to be a partner.

As to what are acts done for carrying on "in the usual way business of the kind carried on", depends to a certain extent upon the character of the business. Trading partners have a much larger scope than those who are in a non-trading partnership. Every partner is in contemplation of law a joint agent of the partnership, and

within the scope and objects of the partnership may therefore bind all the other partners by his acts He may pledge the partnership property, buy goods, borrow money, contract debts, and pay debts. He may make or accept, negotiate or discount, negotiable instruments. In all these cases his authority is implied, and in many others incidental to the business, such as, employment and discharge of servants, retainer of a solicitor or other special agent to act for the firm. In other cases, where authority is exercised which is not implied, it must be expressly proved, as the execution of a deed, entering into a form of guaranty, submission to arbitration.

An act or instrument relating to the business of the firm, and done or executed in the firm's name, or in any other manner showing an intention to bind the firm, by any person thereto authorized, whether a partner or not, is binding on the firm and all the partners; subject to any general rule of law as to the execution of deeds or negotiable instruments.

Where one partner pledges the credit of the firm for a purpose not apparently connected with the firm's ordinary course of business, the firm is not bound, and the remedy must be against the individual, unless the partner is, in fact, specially authorized by the other partners.

If it has been agreed between the partners that any restriction shall be placed upon the authority of any partner, no act done in contravention of the agreement is binding in respect of persons having notice of the agreement. It follows practically from this, as might be supposed, that restrictions imposed upon certain partners are only useful in so far as the partner understands and honourably acts within his limited authority. It is rarely possible to give outsiders notice that a certain partner has not the full status he might be expected to have. The necessity for relying upon the partner to conform to the internal regulations of the firm must be taken as not the least risky element in partnership.

Every partner in a firm is liable jointly with the other partners, and in Scotland jointly and severally, for all debts and obligations of the firm incurred while he is a partner. After his death his estate is also severally liable in a due course of administration for such debts and obligations, so far as they remain unsatisfied; but in England and Ireland the payment of his separate debt has priority. One effect of joint liability, as opposed to liability which is joint and several, is that a judgment recorded against one of several joint debtors, although unsatisfied, is a bar to an action against the others.

The firm is liable, in the same way that the partner himself is liable, for any wrongful act or omission of any partner acting in the ordinary course of business, or with the authority of his co-partners, when loss or injury is caused to any person not being a partner in the firm, or any penalty is incurred. Where one partner acting within the scope of his apparent authority receives the money or property of a third person and misapplies it, and where in the ordinary course of its business a firm receives the money or property of a third person, which is misapplied by one or more of the partners while it is in the custody of the firm, the firm is liable to make good the loss. Every partner is liable jointly with his co-partners, and also severally for everything for which the firm, while he is a partner, becomes liable in these respects.

The question of what is, in fact, a partnership transaction, and what is a transaction with the individual member, becomes of the utmost importance when it is sought to charge a firm on account of the default of a member. The liability of the firm arises in these cases under the general principal of agency. (See Chapter II of this Part.)

Trust Property

If a partner, being a trustee, improperly employs trust property in the business, or on account of the partnership, no other partner is liable for the trust property to the persons entitled. But a partner who has notice of a breach of trust may be liable, and trust money may be followed and recovered from the firm if still in its possession or under its control.

Partnership by "Holding Out"

Everyone who by words spoken or written, or by conduct, represents himself, or who knowingly suffers himself to be represented, as a partner in a particular firm, is liable as a partner to anyone who has, on the faith of any such representation, given credit to the firm, whether the representation has or has not been made or communicated to the person so giving credit by or with the knowledge of the apparent partner making the representation or suffering it to be made. In cases, however, where, after a partner's death, the business is continued in the old firm name, the continued use of this name, or of the deceased partner's name as part thereof, does not of itself make his representatives or estate or effects liable for any partnership debts contracted after his death.

This rule as to holding out is a branch of the law of estoppel, which has already been noticed in connection with Agency. (See Chapter II of

this Part.) "Holding out" is a very important doctrine to those who lend their support to others engaged in business. It is not sufficient, however, that a creditor should have known there was some person behind. There must be a real use of that person's name with his knowledge. It must be shown that credit was given to the firm in the belief that such person was a partner.

Admissions and Notice

An admission or representation made by any partner concerned in partnership affairs, and in the ordinary course of business, is evidence against the firm. Notice to any partner who habitually acts in the partnership business of any matter relating to partnership affairs operates as notice to the firm, except in the case of a fraud on the firm committed by or with the consent of that partner. This, again, is due to the general principle of agency, and the statute has limited the effect of notice to acting partners.

In-coming and Out-going Partners' Liability

A person who is admitted as a partner into an existing firm does not thereby become liable to the creditors of the firm for anything done before he became a partner. A partner who retires from a firm does not thereby cease to be liable for debts and obligations incurred before his retirement. A retiring partner may be discharged from any existing liabilities by an agreement between himself and the members of the firm as newly constituted and the creditors, and this agreement may be either express or inferred as a fact from the course of dealing between the creditors and the new firm. It is a question, therefore, to be decided on one side whether the new firm has assumed the liability, and on the other whether the creditors have agreed to look to the new firm and to discharge the old from liability. It will be obvious that agreements between the partners themselves, without the concurrence of the creditors, cannot effect this change of liability. A transfer of liabilities in this way often takes place on the conversion of a business into a company, in which case the company undertakes to discharge the debts or gives the vendors an indemnity.

Guarantees

Change in the constitution of a firm to which, or in respect of which, a continuing guarantee or cautionary obligation has been given, in the absence of an agreement to the contrary, revokes as to future transactions any such guarantee or obligation. This is a matter generally provided for in the guarantee itself. (See Chapter VIII of this Part.)

RELATIONS OF PARTNERS TO ONE ANOTHER

The relations of partners are generally governed by rules strictly laid down in the partnership deed, or left to the general law; but even where such agreement does not provide for variation, the mutual rights and duties of partners may be varied by the consent of all, and that consent may either be express or inferred from the course of dealing. For example, it may be originally agreed that one of the partners shall not do certain acts without the concurrence of the others. If, however, the partner is afterwards permitted habitually to act in the name of the firm, from such a course of dealing the consent of all the partners will be inferred.

Partnership Property

Partnership property comprises all property and rights and interests in property originally brought into the partnership stock or acquired, whether by purchase or otherwise, on account of the firm, or for the purposes and in the course of the partnership business. Such property must be held and applied by the partners exclusively for the purposes of the partnership, and in accordance with the partnership agreement.

The legal estate or interest in any land, including houses and buildings, or, in Scotland, the title to and interest in any heritable estate, belonging to the partnership, devolves according to its nature and tenure and the general rule of law, but in trust so far as necessary for the persons beneficially interested, i.e. the partners.

Where co-owners of an estate or interest in any land, or in Scotland in any heritable estate, not being itself partnership property, are partners as to profits made by the use of that land or estate, and purchase other land or estate out of the profits to be used in like manner, the latter also belongs to them, in the absence of an agreement to the contrary, as co-owners, not as partners, on similar terms as they held the original land or estate.

Unless there is a contrary intention shown, property bought with money belonging to the

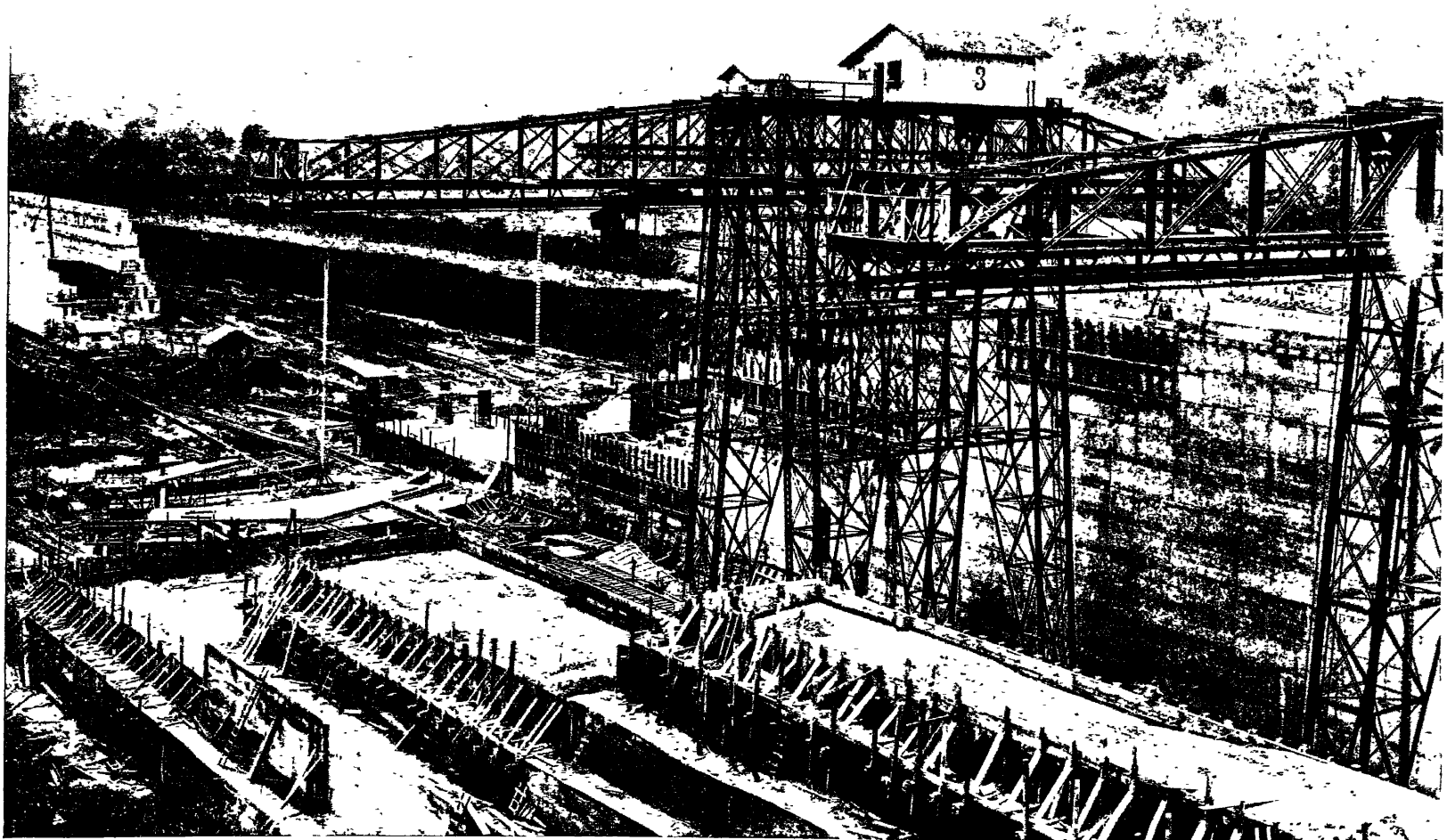


Photo Underwood & Underwood

CONSTRUCTING THE PANAMA CANAL: GENERAL VIEW OF SOUTH END OF PEDRO MIGUEL LOCKS, LOOKING SOUTH

firm is deemed to have been bought on account of the firm.

Where land or any heritable interest therein has become partnership property, unless a contrary intention appears, it is treated as between the partners (including the representatives of a deceased partner), and also as between the heirs of a deceased partner and his executors and administrators, as personal or movable, and not real and heritable estate. This rule is under what is known in law as the doctrine of conversion; and it operates so that partnership property, though real property in fact shall be administered as though it were personal property, and go to the personal representative and not to the heir or devisee.

Partners' Separate Debts

In England and Ireland a writ of execution does not issue against any partnership property except on a judgment against the firm. Any judgment creditor of a partner may apply by summons to the High Court, or a judge thereof, or the Chancery Court of the County Palatine of Lancaster, or a County Court, for an order charging that partner's interest in the partnership property and profits, with the payment of the amount of the judgment debt and interest, and for the appointment of a receiver of that partner's share of profits, declared or accruing, and of any other money which may be coming to him in respect of the partnership, and directing all accounts and enquiries, and giving all other orders and directions which might have been directed or given if the charge had been made in favour of the judgment creditor by the partner, or as the circumstances of the case may require. The other partner or partners may at any time redeem the interest charge or, in the case of a sale being directed, purchase the share. This provision is also applicable to a cost-book company. Rules of court control the service of the summons in such cases on the debtor and his partners.

Interests and Duties of Partners

Subject to any express or implied agreement between the partners, their interest in the partnership property and their rights and duties in relation to the partnership are determined by these rules:—

1. All partners are entitled to share equally in the capital and profits of the business, and must contribute equally towards the losses, whether of capital or otherwise, sustained by the firm.

2. The firm must indemnify every partner in respect of payments made and personal liabilities incurred by him: (*a*) in the ordinary and proper conduct of the business of the firm; or (*b*) in or about anything necessarily done for the preservation of the business or property of the firm.

3. A partner making, for the purpose of the partnership, any actual payment or advance beyond the amount of capital which he has agreed to subscribe, is entitled to interest at the rate of five cent per annum from the date of the payment or advance.

4. A partner is not entitled, before the ascertainment of profits, to interest on the capital subscribed by him.

5. Every partner may take part in the management of the partnership business.

6. No partner is entitled to remuneration for acting in the partnership business.

7. No person may be introduced as a partner without the consent of all the existing partners.

8. Any difference arising as to the ordinary business matters may be decided by a majority of the partners; but no change may be made in the nature of the partnership business without the consent of all the existing partners.

9. The partnership books are to be kept at the place of business of the partnership, or the principal place, and every partner may when he thinks fit have access to and inspect and copy any of them.

It must be clearly understood that these are rules regulating partnership relations in the absence of any agreement to the contrary. It is most common for shares to be unequal, and as between the partners themselves the amount of contribution may be fixed by agreement. It is often provided that a loan from one partner to the firm shall bear a stipulated rate of interest. The rule that no stranger may be introduced without the consent of all the existing partners, is fundamental, but there may be an agreement by which shares are transferable, or under which certain named persons are to be introduced in certain events. A controlling voice may often be given to one partner; in fact where there are only two partners, and their interests are equal, it is always wise to stipulate for some way out of the equality where there is a difference of opinion.

Difficulties may often arise in the decision of differences, and as to the nature of the business upon which the decision is required. It may, therefore, be wise to stipulate for very wide powers in the majority, either in number or interest. More partnerships are wrecked for the want of a deciding factor, perhaps, than for any other reason. When the decision is that of the majority it must be arrived at seriously and

honestly after the opinion of every partner has been taken.

A partner has a right to inspect and copy the partnership books, and to use the information after he has ceased to be a partner, but not so as to be hostile or injurious to the firm. His rights to such information, however, are clearly greater than those of an agent. (See also Chapter XVI of this Part.)

Unless the power has been reserved by express agreement, no majority of partners can expel any partner; and the difficulty of framing a really satisfactory provision is one of the weaknesses of the partnership system. Still, in a partnership consisting of more than two, a term may be devised to that effect, by means of which on reasonable notice or payment according to the circumstances a partner may by a majority be expelled. It must be remembered that any application to the Courts for a dissolution on grounds of incompatibility would often be fatal to a professional partnership, and arbitration should therefore be provided for in the partnership agreement

Term of Partnership

It almost invariably happens that the partnership is made for a certain fixed time with provision for its renewal or readjustment; but if no time is fixed any partner may determine the partnership at any time on giving notice of his intention to all the other partners. If the partnership has been originally constituted by deed, a notice in writing signed by the partner giving it is nevertheless sufficient. The unsatisfactory nature of a partnership determinable at any time should secure that a time is stipulated in every agreement.

Where a partnership entered into for a fixed term is continued after the term has expired, without any express new agreement, the rights and duties of the partners remain the same as they were at the expiration of the term, so far as is consistent with the incidence of a partnership at will. It is presumed to be a continuance of the partnership if the business is continued by the partners, or such of them as habitually acted during the term, without any settlement or liquidation of the partnership affairs.

Duty to Account and not to Compete

Partners are bound to render true accounts and full information of all things affecting the partnership to any partner or his legal representatives. A most important rule is that partners are not allowed to make private profits out of their connection with the firm. Every partner must account to the firm for any benefit derived by him without the consent of the other partners from any transaction concerning the partnership, or from any use by him of the partnership property, name, or business connection. This applies also to transactions undertaken after the partnership has been dissolved by the death of a partner, and before the affairs have been completely wound up, either by any surviving partner or by the representatives of the deceased partner. In this respect partnership again resembles agency, and the rule preserves good faith between partners in connection with the business profits, direct and indirect.

A partner must not compete with the firm. If, without the consent of the other partners, he carries on any business of the same nature as and competing with that of the firm, he must account for and pay over to the firm all profits made by him in that business. It is, of course, a common, and often advantageous, thing for one of the partners to be interested in other businesses of a like character; but this fact must always be disclosed, when it is a matter of agreement how the profits and connection shall be treated. Connections which do not conflict with the partnership are only of interest as regards the disposal of the partner's time and his financial risks. These often form the subject of partnership regulations, but do not come within this rule.

Assignee of Partner's Share

If any partner makes an assignment, either absolute or by way of mortgage or redeemable charge, of his share in the partnership, the assignee is not entitled as against the other partners during the continuance of the partnership to interfere in the management or administration, or to require any accounts of the partnership transactions, or to inspect the books. The assignee is only entitled to receive the share of profits to which the assigning partner would otherwise be entitled, and he must accept the account of the profits agreed to by the partners. In the case of a dissolution of the partnership, whether as respects all the partners or the assigning partner, the assignee is entitled to receive the share of the partnership assets to which that partner is entitled as between himself and the other partners; and, for the purpose of ascertaining that share, to an account as from the date of the dissolution.

DISSOLUTION OF PARTNERSHIP

Subject to any agreement between the partners (which is of course most usual) the partnership is dissolved:—

(*a*) If entered into for a fixed term, by the expiration of that term·

(*b*) If entered into for a single adventure or undertaking, by the termination of that adventure or undertaking:

(*c*) If entered into for an undefined time, by any partner giving to the other or others notice of his intention to dissolve the partnership.

In the last case the partnership is dissolved as from the date mentioned in the notice as the date of dissolution, or, if no such date is mentioned, as from the date of the communication of the notice. After notice dissolving a partnership for which no time has been fixed the partnership will exist only for the purposes of winding up.

In the absence of any agreement between the partners every partnership is dissolved as regards all the partners by the death or bankruptcy of any partner. A partnership may at the option of the other partners be dissolved if any partner suffers his share of the partnership property to be charged for his separate debt (see p. 117)

A partnership is in every case dissolved by the happening of any event which makes it unlawful for the business of the firm to be carried on, or for the members of the firm to carry it on in partnership. Outbreak of war is the most common instance of this.

Dissolution by the Court

In certain cases the Court may decree a dissolution of the partnership on the application of a partner:—

(*a*) When a partner is found lunatic by inquisition, or in Scotland by cognition, or is shown to the satisfaction of the Court to be of permanently unsound mind. The application in such a case may be made on behalf of the affected partner by his representatives as well as by any other partner:

(*b*) When a partner, other than the partner suing, becomes in any way permanently incapable of performing his part of the partnership contract;

(*c*) When a partner, other than the partner suing, has been guilty of conduct which in the opinion of the Court, regard being had to the nature of the business, is calculated prejudicially to affect the carrying on of the business; or

(*d*) When such a partner wilfully or persistently commits a breach of the partnership agreement, or otherwise so conducts himself in matters relating to business that it is not reasonably practicable for the other partner or partners to carry on the business with him:

(*e*) When the business of the partnership can only be carried on at a loss.

(*f*) Whenever in any case circumstances have arisen which, in the opinion of the Court, render it just and equitable that the partnership should be dissolved

The grounds of an application to the Court for the dissolution of partnership on account of a partner's default must, of course, vary considerably with the circumstances of the case The conduct must refer to the business and its reputation; but the state of feeling engendered in the minds of the partners may so affect the conduct of the business as to afford good grounds for dissolution. No frivolous differences of opinion would, however, be of sufficient weight. Arbitration has special ,advantages over an application to the Courts; and it should be always attempted even when not stipulated for in the partnership agreement.

Notice of Change in Firm

As regards persons dealing with the firm, any change in its constitution must be brought to their notice; otherwise they are entitled to treat all apparent members of the old firm as continuing members Circular letters should therefore be sent out notifying any change in or dissolution of the partnership to all those with whom the firm has done business (see Part I, Chapter VI).

As regards persons who had not had dealings with the firm before the dissolution or change, it is provided that as to a firm whose principal place of business is in England or Wales an advertisement in the *London Gazette*, as to a firm whose principal place of business is in Scotland an advertisement in the *Edinburgh Gazette*, and as to a firm whose principal place of business is in Ireland an advertisement in the *Dublin Gazette*, shall be sufficient notice.

The estate of a partner who dies or who becomes bankrupt, or of a partner who, not having been known to the person dealing with the firm to be a partner, retires from the firm, is not liable for partnership debts contracted after the date of the death, bankruptcy, or retirement. On the dissolution or retirement of a partner, notice to that effect may be given by any partner, who may require the other partner or partners to concur for that purpose in all necessary or proper acts which can-

not be done without his or their concurrence. In practice the publishers of the *Gazette* do not receive an advertisement of this character unless it is signed by all the partners and supported by a declaration of a solicitor or other legal agent.

Notice of Dissolution of Ordinary Partnership

Notice is hereby given, that the Partnership heretofore subsisting between us, the undersigned, James Charles West and Roger William West, carrying on business as Coal Merchants and Cartage Contractors, at——, in the county of——, under the style or firm of West Brothers has been dissolved by mutual consent, as from 1st December last. All debts due to and owing by the said late firm will be received and paid by the said Roger William West, who will continue to carry on the business [under the same name].

JAMES CHARLES WEST.
ROGER WILLIAM WEST.

Date

Winding-Up

After the dissolution of a partnership the authority of each partner to bind the firm, and the other rights and obligations of the partners, continue so far as may be necessary to wind up the affairs of the partnership, and to complete transactions begun but unfinished at the time of the dissolution, but not otherwise But a firm is in no case bound by the acts of a partner who has become bankrupt, although this does not affect the liability of any person who has after the bankruptcy represented himself or knowingly suffered himself to be represented as a partner of the bankrupt.

On the dissolution of a partnership every partner is entitled, as against the other partners, and all persons claiming through them in respect of their interests as partners, to have the property of the partnership applied in payment of the debts and liabilities of the firm; and to have the surplus assets after such payment applied in payment of what may be due to the partners respectively after deducting what may be due from them as partners to the firm. For this purpose any partner or his representatives may on the termination of the partnership apply to the Court to wind up the business and affairs af the firm. Each partner has therefore what is known as an equitable lien upon the partnership property existing at the dissolution, which gives him the right to have it applied in accordance with the partnership. An important asset of the partnership is generally the goodwill of the business, and in the absence of any agreement any partner has therefore the right to have the goodwill of the business disposed of for the benefit of all the partners. The subject of Goodwill and the use of the firm name is, however, treated more fully in Chapter XVI of this Part.

Partnership Premiums

Where one partner has paid a premium to another on entering into the partnership for a fixed term, and the partnership is dissolved before the expiration of that term, otherwise than by the death of a partner, the Court may order the repayment of the premium, in whole or in part, having regard to the terms of the partnership contract and the length of time during which the partnership has continued; unless the dissolution is wholly or chiefly due to the misconduct of the partner who paid the premium, or the partnership has been dissolved by an agreement containing no provision for the return of any part of the premium. The Court has therefore, where there has been no agreement, a wide discretion as to the return of the premium or part of it; but the course which will probably be taken is the return of a sum proportionate to the amount of the original premium, having regard to the time for which the partnership existed. If a premium agreed to be paid, or any part of it, is unpaid at the date of the dissolution, the Court may order it to be paid.

Dissolution on account of Fraud, &c.

Where a partnership contract is rescinded on the ground of the fraud or misrepresentation of one of the parties, the party entitled to rescind is, without prejudice to any other right, entitled:—

(*a*) To a lien on, or right of retention of, the surplus of the partnership assets, after satisfying the liabilities, for any sum of money paid by him for the purchase of a share in the partnership, and for any capital contributed by him, and

(*b*) to stand in the place of the creditors of the firm for any payments made by him in respect of the partnership liabilities, and

(*c*) to be indemnified by the partner guilty of the fraud or making the representation against all the debts and liabilities of the firm.

Right to Share Profits after Dissolution

It sometimes happens that when a member of a firm dies, or otherwise ceases to be a partner, the business is carried on without any final settlement of accounts. In such a case, in the absence of any agreement to the contrary, the outgoing partner or his estate is entitled, at the option of

himself or his representatives, to such share of the profits made since the dissolution as the Court may find to be attributable to the use of his share of the assets, or to interest at the rate of 5 per cent per annum on the amount of his share of the assets. In cases, however, where under the partnership agreement an option is given to surviving or continuing partners to purchase the interest of a deceased or outgoing partner, and the option is duly exercised, the estate of the deceased partner, or the outgoing partner or his estate, is not entitled to any further or other share of the profits; but if a partner assuming to act in exercise of the option does not in all material respects comply with its terms, he is liable to account under the general rule. In any case the claim must be made either for profit or interest. Both cannot be recovered.

Subject to any agreement between the partners, the amount due from surviving or continuing partners to an outgoing partner or his representatives in respect of his share is a debt accruing at the date of the dissolution or death.

Distribution of Assets

The rules for the distribution of assets after the final settlement of accounts is as follows:—

(*a*) Losses, including losses and deficiencies of capital, are to be paid first out of profits, next out of capital, and lastly, if necessary, by the partners individually in the proportion in which they were entitled to share profits:

(*b*) The assets of the firm, including the sums, if any, contributed by the partners to make up losses or deficiencies of capital, are to be applied in the following manner and order:—

(1) In paying the debts and liabilities of the firm to persons not partners.

(2) In paying to each partner rateably what is due from the firm to him for advances as distinct from capital:

(3) In paying to each partner rateably what is due from the firm to him in respect of capital:

(4) Any ultimate residue is to be divided among the partners in the proportion in which profits are divisible.

ACTIONS BY AND AGAINST FIRMS AND ADMINISTRATION OF PARTNERSHIP PROPERTY

Actions by and against Firms

Where two or more persons carry on business under a firm name, special rules govern the procedure by which they sue and are sued. Any two or more persons claiming or being liable as co-partners and carrying on business within the jurisdiction of the Court may sue or be sued in the name of the respective firms, if any, of which such persons were co-partners at the time the cause of action accrued. Any party to the action may, in such case, apply for an order from the Court for a statement of the names and addresses of the persons who were, at the time the cause of action accrued, co-partners in any such firm, to be furnished and verified as may be directed by the Court.

When persons sue in the name of their firm, they must, on demand in writing on behalf of the plaintiff, declare in writing the names and places of residence of all the persons constituting the firm on whose behalf the action is brought. Upon failure so to do, the proceedings may be stayed. When the names of the partners are so declared, suing in the name of the firm is equivalent to suing in the name of all the partners, but proceedings continue in the name of the firm.

When persons are sued as partners in the name of their firm, the writ must be served either upon any one or more of the partners, or at the principal place, within the jurisdiction, of the business of the partnership upon any person having at the time of service the control or management of the partnership business there. This is a good service of the writ, but if the co-partnership has been dissolved to the knowledge of the plaintiff before the commencement of the action, the writ must be served upon every person within the jurisdiction who is sought to be made liable. At the time of the service of the writ, every person upon whom it is served must be informed by notice in writing whether he is served as a partner or as a person having the control or management of the business, or in both characters. In default of such a notice, he is deemed to be served as a partner.

Where persons are sued as partners in the name of their firm, they must appear individually in their own names, but subsequent proceedings, nevertheless, continue in the name of the firm. Where a writ is served upon a person having control or management of the partnership business, it is not necessary that he should make an appearance unless he is a member of the firm sued. Any person sued as a partner may enter an appearance under protest denying that he is a partner, but such an appearance does not preclude the plaintiff from otherwise serving the firm and obtaining judgment against the firm in default of appear-

ance, if no person has entered an appearance in the ordinary form.

Where a judgment or order is against a firm, execution may issue (*a*) against any property of the partnership within the jurisdiction; (*b*) against any person who has appeared in his own name as a partner, or who has admitted on the pleadings that he is or has been judged to be a partner; (*c*) against any person who has been individually served as a partner with the writ of summons and has failed to appear.

If the party who has obtained judgment or an order claims to be entitled to issue execution against any other person as being a member of the firm, he may apply to the Court for leave to do so, and may be given leave if the liability is not disputed, or, if the liability is disputed, the question of liability may be tried and determined in the usual manner; but except as against any property of the partnership a judgment against a firm does not render liable, release, or otherwise affect any member of the firm who was out of the jurisdiction when the writ was issued, and who has not appeared to the writ, unless he has been made a party to the action, or has been served within the jurisdiction after the writ and the action was issued

Debts owing from a firm carrying on business within the jurisdiction may be attached, although one or more members of the firm may be resident abroad; provided that the garnishee order is served upon a person having the control or management of the business, or a member of the firm within the jurisdiction. These rules apply also to actions between a firm and one or more of its members, and to actions between firms having one or more members in common, provided that such firm or firms carry on business within the jurisdiction of the Court; but the leave of the Court must be obtained before execution is issued, and on an application for leave, accounts and enquiries may be directed and special directions given.

Any person carrying on business within the jurisdiction of the Court in a name or style other than his own name may be sued in such name or style as if it were a firm name, and, so far as the nature of the case permits, the rules relating to the proceedings against firms apply. That is to say, if a man, John Smith, carries on business as Jones & Co, or the Excelsior Supply Company, he may be sued in his firm name.

It is often advocated that the use of such firm names by individuals should be placed under some restriction or made the subject of registration, but the question of firm names is noticed elsewhere.

Administration of Partnership Estates

The general rule in administering English and Irish estates of deceased partners, and of bankrupt or insolvent partners, is that the partnership property is applied as joint estate in payment of the debts of the firm, and the separate property of each partner is applied as separate estate in payment of his separate debts. Any surplus of the joint estate is then applied in payment of the separate debts of the partners, or any surplus of the separate estate is applied in payment of the debts of the firm.

In Scotland, upon the sequestration of copartners, their separate estates are applicable to the payment *pari passu* of their respective separate debts, and of so much of the partnership debts as the partnership estate is insufficient to satisfy.

The rules in bankruptcy are noticed elsewhere (Chapter XI of this Part), and this is hardly the book in which to treat of exceptional remedies or special circumstances.

LIMITED PARTNERSHIP

It had long been advocated that a system of partnership in which one or more of the partners might enjoy limited liability to a certain extent should be possible under British law as it had been in certain Continental and American systems. There a system of *commandite* had long obtained, and Germany, in 1892, admitted a new form of partnership in which all partners were limited. In 1907 an Act was passed to give effect to this desire, and limited partnerships are now recognized as legal possibilities in Great Britain. The general law as to partnerships applies as to limited partnerships, except where especially excluded by this Act. Limited partnership has not, however, been very largely resorted to, the Companies Act (especially the encouragement given to private companies) generally providing a safer and more efficient means of associated capital. It was found impossible to give the limited partner any voice in the actual control of the business; or, in other words, such a partner intervening in the conduct of the business would always be in danger of making himself liable as a general partner. Still, by agreement between the partners, it is possible to insist upon his consent being necessary before any extraordinary transaction is entered into, and the system is one worthy of the attention of the business community. For the better security of the

limited partner a policy of insurance can be taken out on the fidelity principle, which guarantees the good faith of the general partner.

General and Limited Partners

A limited partnership must not consist, in the case of a banking partnership, of more than ten persons, and, in any other case, of more than twenty persons. There must be one or more persons called general partners who are liable for all debts and obligations of the firm, and one or more persons called limited partners, who at the time of entering into such partnership contribute capital or property valued at a stated amount, and who are not liable for the debts and obligations of the firm beyond that amount.

A limited partner must not, during the continuance of the partnership, directly or indirectly, draw out or receive back any part of his contribution. If he does so draw out or receive back any such part he remains liable for the debts and obligations, nevertheless, up to the agreed amount. Corporations may be limited partners.

A limited partner must not take part in the management of the partnership business, and has no power to bind the firm; but he may by himself or his agent at any time inspect the books of the firm and examine into the state of the prospects of the partnership business, and may "advise with the partners thereof". It is not easy to see what a limited partner can do if his "advice" is rejected. If a limited partner takes part in the management of the partnership business he is liable for all debts and obligations the firm incurs while he so takes part in the management as though he were a general partner.

A limited partnership is not dissolved by the death or bankruptcy of a limited partner, nor is the lunacy of a limited partner a ground of dissolution by the Court unless the lunatic's share cannot otherwise be ascertained and realized. On the dissolution of a limited partnership its affairs are wound up by the general partners unless the Court otherwise orders.

Applications to wind up a limited partnership must be made to the Court by petition in the prescribed forms, as in the case of companies, and the rules for the winding-up of companies apply generally to limited partnerships. A petition is presented to the High Court, and it may then be remitted to the Courts of the County Palatine of Lancaster or Durham or to a County Court.

Conduct of the Partnership Business

Carefully drawn regulations should, of course, prescribe the conduct of such a partnership, but subject to any such agreement, express or implied, between the partners,

1. Any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the general partners.
2. A limited partner may, with the consent of the general partners, assign his share in the partnership, the assignee thereupon becoming the limited partner with all the rights of the assignor:
3. The other partners are not entitled to dissolve the partnership by reason of any limited partner suffering his share to be charged for his separate debt:
4. A new partner may be introduced without the consent of the existing limited partners:
5. A limited partner is not entitled to dissolve a partnership by notice.

Registration

Every limited partnership must be registered with the Registrar of Joint Stock Companies. Registration is effected by sending by post or delivering to the Registrar at the office of registration in the part of the United Kingdom in which the principal place of business is situated a statement signed by the partners in the required form. The form is as given on p. 124.

In default of registration, a partnership is deemed to be a general partnership, and every limited partner is deemed to be a general partner. It will be seen that the particulars which must be registered are: the firm name; the general nature of the business; the principal place of business, and the full name of each of the partners; the term, if any, for which the partnership is entered into, and the date of its commencement; a statement that the partnership is limited, and a description of every limited partner as such; and the sum contributed by each limited partner, whether in cash or how otherwise. A certificate of registration is issued by the Registrar as in the case of a limited company.

If during the continuance of a limited partnership any change is made or occurs in the firm name, the general nature of the business; the principal place of business; the partners or the name of any partner; the term or character of the partnership; the sum contributed by any limited partner; the liability of any partner by reason of his becoming a limited instead of a general partner, or a general instead of a limited partner, a statement in the form prescribed, signed by the firm, certifying the nature of the change must, within seven days, be sent by post or delivered to the Registrar where the partnership is registered.

Default in compliance with these requirements

Form of Application

Form L.P. 1.

No. of Certificate .....

LIMITED PARTNERSHIPS ACT, 1907

£2 stamp.

APPLICATION FOR REGISTRATION OF A LIMITED PARTNERSHIP

We, the undersigned, being the partners of the firm *Allsouls & Co.*, hereby apply for registration as a limited partnership, and for that purpose supply the following particulars, pursuant to Section 8 of the Limited Partnerships Act, 1907:—

The firm name.	*Allsouls & Co.*
The general nature of the business.	*Grocers.*
The principal place of business.	*London.*
The term, if any, for which the partnership is entered into, and the date of its commencement.	Term (if any) *5* years. If no definite term, the conditions of existence of the partnership. .....
Date of commencement.	*1st January next.*

The partnership is Limited.

Presented or forwarded for filing by [*Solicitors*]. (Or other person)

	[1] Amount contributed by each partner, and whether paid in cash or how otherwise.
Full name and address of each partner.	
General partners.	*John Allsouls*, £3000 in stock and business assets. *George Henry Allsouls*, £3000 in stock and business assets. *Thomas Allsouls, Junior*, £1000 in stock and business assets
Limited partners.	*Henry Barclay*, £2000 in cash. *Frederick Barclay*, £2000 in cash.
Signatures of all partners.	*John Allsouls.* *George Henry Allsouls.* *Thomas Allsouls, Junior.* *Henry Barclay.* *Frederick Barclay.*

Date . .. .

[1] A separate statement (Form L P 3) of the amounts contributed must accompany this application, for the purpose of payment of capital duty, pursuant to Section 11 of the Act.

of registration subjects each general partner to a fine of £1 per day. Making a false return is a misdemeanour. Notice in the form prescribed of any arrangement or transaction by which any person will cease to be a general partner in any firm, and will become a limited partner in that firm, or under which the share of a limited partner is assigned to any person, must be advertised in the London, Edinburgh, or Dublin *Gazette* as the case may be. Until so advertised, the arrangement or transaction is deemed of no effect.

A stamp duty of 5*s.* per cent is payable on the amount contributed by limited partners. A certificate of registration is forwarded by the Registrar to each firm; the charge is £2, and 5*s.* for registering changes in constitution. The Registrar keeps a register and index of all limited partnerships, and any person may inspect the statements filed on payment of a fee of 1*s.*, or obtain a certificate of the registration of any limited partnership for 2*s.*, or copy of or extract from any registered statement on paying 6*d.* per folio. A certificate of registration or a certified copy is accepted as evidence in all legal proceedings.

Notice of Dissolution of Limited Partnership

Form No. . . .

Notice is hereby given that the Limited Partnership heretofore subsisting between us, the undersigned, William Allgrove and John Henry Pennyfather, carrying on business as drapers and clothiers, under the name or style of Allgrove & Co., at——, in the County of Oxford, under the provisions of a certain indenture, dated , has been dissolved by mutual consent, the said William Allgrove, the general partner, having purchased the share or interest of the said John Henry Pennyfather, the limited partner.

WILLIAM ALLGROVE.
JOHN HENRY PENNYFATHER.

Dated.....

FORM OF PARTNERSHIP AGREEMENT

[It is always advisable that in cases of any importance a Deed of Partnership should be drawn up by a lawyer. Every business will require its peculiar stipulations. The following is merely an indication of some of the points which must be settled]

AN AGREEMENT made this day of between John Jones of , Charles Smith of , and Robert Robinson of WITNESSETH THAT the said parties agree to become partners in the business and undertaking of General Store Dealers, at the places hereinafter mentioned and on terms as follows:—

1. That the partnership shall continue for a term of five years from the date hereof, but nevertheless shall be determinable as hereinafter provided.

2. That the style of the business shall be the Barsetshire Stores, and the business shall be carried on at the towns of A, B, and C, in the county of Barset, or at other places as may be hereafter determined.

3. The business at A, which shall be the head office, shall be managed by John Jones; the business at B shall be managed by Charles Smith; and the business at C shall be managed by Robert Robinson; and the respective partners undertake to reside at the place of business or in the town where they have the management. The management of any branches or any additional business premises shall be arranged for from time to time.

4. The capital shall consist of the sum of £10,000, to which John Jones shall contribute £4000; Charles Smith, £3000; and Robert Robinson, £3000, which sums are agreed to be the values respectively of the businesses now owned by John Jones, Charles Smith, and Robert Robinson at A, B, and C, respectively. If any partner shall at the request of the firm provide any other capital money, he shall be entitled to be paid 6 per cent interest thereon before any profits are divided.

5. A balance sheet shall be made up every year to the 29th September, and the profits or losses as the case may be shall be divided in the following proportions: four-tenths to John Jones, and three-tenths to Charles Smith, and three-tenths to Robert Robinson.

6. Each partner shall be at liberty so far as the funds permit at the end of each month, or otherwise as they may agree, to draw out from the business on account of his share of profits for the current year a sum not exceeding.... If, on taking the annual account in any year, any partner is found to have drawn more than any profits due to him for that year, he shall at once refund the excess.

7. The premises now in occupation of the business in the respective towns shall continue to be used, and the rents shall be paid by the partnership. The value of the dwelling house attached to the premises at A is agreed to be £40 a year; at B £35 a year; and at C £30 a year. These amounts shall be paid by the partners occupying the premises to the partnership subject to any arrangement which may be agreed, and so long as the partner shall reside upon the premises.

8. The accounts of each business shall be kept by the partner managing the business, in the manner agreed, and shall be subject to the general control of the auditor of the firm. All moneys shall be paid into the local banking account of the firm, and be drawn upon in the name of the firm as is from time to time agreed. The accounts of the partnership shall be kept at the premises at the head office at A, under the direction of John Jones. Such accounts shall, however, be open at all times to the inspection of the other partners, and if any dispute shall arise at any time as to the method of keeping the accounts or as to the correctness of any charge made against or money received for the partnership, the matter shall be referred to the auditor, and the decision of the auditor shall be final.

9. Each partner shall devote all his time and attention to the business of the partnership, and shall not without the written consent of the other partners engage in any other business, whether in competition with the firm or not.

10. No partner shall act as bail or surety for any person, nor lend or give away any of the partnership money or assets to any person, nor give away or deliver on credit any goods of the firm, except as is agreed. The partner violating any of these undertakings shall make good to the partnership any loss resulting therefrom.

11. If any partner shall die during the continuance of the partnership, or become permanently incapable of transacting business in connection with the partnership, or be incapacitated by illness for a period of more than six months, the remaining partners shall be entitled to purchase the share of such partner at a price to be agreed upon by arbitration and valuation as provided.

12. If any partner shall commit or be guilty of any breach of any stipulation contained in this agreement, or any other flagrant breach of his duties as partner, the other partners may by notice in writing determine the partnership, and if any question shall arise whether a case has happened to authorize the exercise of this power, such question shall be referred to arbitration, if the offending partner shall within seven days of the receipt of the notice so request in writing.

13 On the dissolution of this partnership by effluxion of time or for any other cause other than breach of duty, a valuation by a valuer or valuers appointed by the arbitrator shall be made of the stock-in-trade at the various premises, and the partners shall be entitled to take their shares in money or stock in accordance with such valuation. Any stock not taken shall be sold for the benefit of the firm. The goodwill of the business at A shall on such a dissolution belong to John Jones; at B to Charles Smith; and at C to Robert Robinson.

14. If any partner is expelled for breach of duty under the powers of clause 12, he shall be entitled to receive such sum of money as the arbitrator shall award to be the value of his share of the stock-in-trade and business assets in hand and any share of profits accrued due at the time of the expulsion, but he shall not be entitled to any share of general goodwill or to the goodwill of the business which he has managed.

15. Any partner may retire during the continuance of the partnership by giving six months' notice to the other partners of his intention, and he shall then be entitled to receive his share of the capital value of the business, assets in hand, and accrued profits, which shall be fixed by the arbitrator at the time of his retirement, and at the option of the remaining partner or partners to the goodwill of the business of which he has had the management or to his share of the goodwill of the whole in accordance with a valuation made as in Clause 13 provided.

16. On the dissolution of the partnership, otherwise than by expulsion of one or more of the partners, the other partner or partners shall not engage in any business directly or indirectly competing in any way or interfering with the business of each other in the towns of A, B, and C, respectively, or set up any new competing business within a radius of ten miles thereof.

17. Any difference arising between the partners or their respective representatives with regard to the construction of any term of this Agreement, or as to the rights and liabilities of the partners or any of them as to the conduct of the business or the dissolution thereof, shall be referred to as sole arbitrator, or failing him to the person nominated by the President of the Auctioneers' Institute of the United Kingdom for the time being.

AS WITNESS the hands of the said parties:

[AUTHORITIES.—*Lindley*, "Treatise on the Law of Partnership" and "The Limited Partnerships Act"; *Pollock*, "Digest of the Law of Partnership".]

CHAPTER IV

CORPORATIONS

A.—Trading Companies

The Promotion of Companies—The Formation of Companies—The Memorandum of Association—Articles of Association—Certificate of Incorporation—The Directors—The Prospectus—Allotment—Meetings—Accounts—Shares—Alteration of Capital—Powers to Borrow Money—Private Companies—Winding-up of Companies—Companies Established outside the United Kingdom—Criminal Liability—Company Laws in the British Empire.

The Companies Consolidation Act, 1908, now contains all the legislation enacted by the great statute of 1862 and subsequent statutes. It purports to be a complete code of company law, and its utility may be gauged from the fact that before it was passed it was necessary to pick out the law from some thirty-nine statutes, extending from 1862 to 1907, with the usual inconvenience that results when sections in earlier statutes are repealed by later statutes.

The Companies Act applies to companies other than trading companies (see Chapter V of this Part). If results are any true indication of the utility of a particular class of legislation, the returns published by the Registrar of Companies speak eloquently of the opinion of the commercial world as to the advantage to be gained by carrying on business by means of a limited company. It is difficult, no doubt, to say how far legislation is responsible for the modern method of carrying on business, in view of the fact that the growth of competition, coupled with the facilities of communication and transport, has made it wellnigh impossible for one or two individuals to trade successfully with a comparatively small amount of capital at their disposal.

A limited company has many advantages, to be considered hereafter, in addition to that gained by the uniting of capital for the purpose of industry, but it has also disadvantages. These disadvantages may in the main be classified under two heads: Firstly, a way is thrown open for the perpetration of fraud upon members of the public who by means of various misrepresentations are induced to put their savings into worthless companies. As far as possible the law safeguards the public from this class of fraud, and for more serious cases there is the criminal law. But in the absence of misrepresentation nothing can be done to prevent ill-advised persons from investing capital in concerns which, for various reasons, are doomed to failure before ever they commence to trade. That an immense amount of capital finds its way out of the pockets of the investing public into other pockets by means of bogus companies is too well evidenced by the large number of companies that go into liquidation or otherwise disappear without earning a penny piece for the unfortunate shareholders, and with little or no pretence of seriously carrying out the projects for which they were respectively formed. Secondly, even where there is a *bona fide* business to be done, and a *bona fide* intention to do it, there is usually a much greater risk of loss of capital in the case of a limited company than in the case of a private business. It is a matter of everyday experience to find that a large private business, which brought its founder a fortune, upon being turned into a public company steadily declines till it is snuffed out altogether or is in a chronic state of insolvency. The reason is not hard to trace. The personal element, the individual enterprise, which were to a great extent responsible for success when the business was a private undertaking,

have disappeared; in their place is a fictitious entity known as a company, with a board of directors and managing staff, whose main interest in the success of the business may lie in the receipt of salaries. That careful economy, that minute watching for waste which is essential for success in a business where the turnover is great and the profit small, find very often no continuance when a public company takes over the business. The inertia of the shareholder offers no hindrance to slackness; it is very seldom that he can be induced to attend the annual meetings of the company in which he is interested; in spite of the care that the legislature has taken to ensure as far as possible that the annual balance sheet shall be some indication of the true financial state of affairs (it has taken years to accomplish so much), the indifferent shareholder only too frequently fails to peruse it. It is not a travesty of the facts to say that the majority of shareholders in this country only begin to take an interest in their companies when it is too late to avoid failure.

THE PROMOTION OF COMPANIES

Successfully to float a public company, the services of the company promoter are usually required. Much preliminary work is necessary before a company is ready to offer its shares for subscription by the public. Any person who joins, as a principal, in the preliminary work of promoting the company is a promoter, whether he play a substantial part or a minor part. With the growth of companies there arose almost a profession whose members delighted to be styled "company promoters"; of late years, however, the title has not been so coveted, owing to the suspicion engendered by exorbitant, if not fraudulent, profits made out of promotion. The word promoter has now a statutory recognition, but there is no magic in the name; the essence of the thing is the taking part in the formation of the company, over and above ministerial acts; for the solicitor who merely drafts the material documents and nothing more is not a promoter.

The most important duty of the promoter is to effect the transfer of the property from the vendor to the company. In addition, he is responsible for the actual form the company shall take. When it is registered the company is a mere shell, with a Memorandum and Articles of Association, the creation of the promoter. The directors of this empty shell are found by the promoter. The promoter drafts the prospectus; he provides the company with stockbrokers, solicitors, bankers, &c., and pays in the first place all the preliminary expenses, e.g. the fee to the stockbroker, the stamp duties on the various contracts, the cost of registering the company. These things are matters of detail and vary with each company.

To transfer the property, it is very common for the promoter to purchase from the vendors and then sell it again to some person as trustee for the proposed company, the difference in price representing the promoter's remuneration for his services. This arrangement is not essential, as the promoter can arrange for the vendors to transfer direct to such trustee. Frequently promoters constitute themselves into a syndicate, registered as a limited company under the Act, for the purpose of carrying out the purchase and sale. This is a very useful method when it is necessary to exploit some new invention. The amount of money required to test the commercial value of an invention is often far beyond the means of the inventor. This money in the first instance is found by a small financial syndicate subscribed to by the few who have some faith in the merits, with the intention that if experiments prove successful, a large public company is to be formed to put the invention on a commercial basis.

It will be readily understood that by judicious concealment of facts it would be possible for promoters to secure immense profits on the re-sale of property, at the expense of the public who subscribe for the shares. The legislature has to some extent safeguarded the public by compelling promoters to make certain disclosures in the prospectus upon which the public is invited to subscribe for shares. Thus, the prospectus must disclose the dates of, and parties to, every material contract made within two years from the issue; the amount paid within two years, or intended to be paid, to any promoter, and the consideration; the amount, or estimated amount, of preliminary expenses; the names and addresses of the vendors, and the amount payable in cash, shares, or debentures. Where the promoters are vendors to the company, having themselves purchased the property for the sole purpose of forming the company to buy it, it is necessary to disclose the details of the contract under which they purchased from the real vendors; for every person is deemed a vendor who has entered into a contract in respect of property ultimately to be acquired by the company where (*a*) the purchase money is not fully paid at the date of the issue of the prospectus (in the cases in question the promoters most probably

rely upon being paid by the company before paying the real vendor); (*b*) the purchase money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus (a device often resorted to by promoters); (*c*) the contract depends for its validity or fulfilment on the result of that issue. This would meet the case where the promoters provide, under the contract with the vendors, that the purchase money shall be returned if the company be not successfully floated. It will be noticed that the legislature has taken special precaution in respect of contracts. All material contracts of whatever nature must be disclosed, but in the case of contracts with the vendors to which the vendors are parties the actual details must be disclosed. To ascertain the details of other contracts, the intending shareholder must examine the contract for himself.

If an untrue statement is made in regard to any of the above-named matters in the prospectus, the promoters are liable to compensate all persons who subscribe for shares or debentures on the faith of the prospectus in respect of any damage that they may have sustained. Promoters are also liable for untrue statements appearing in the prospectus touching any matter required to be mentioned in the prospectus—a point discussed more fully later on.

The statute does not interfere with the liability of promoters under the general law of the land. Promoters are trustees for the company, and apart altogether from the above statutory enactments, which give the shareholders individually a remedy, the company itself can recover back by way of damages any secret profits which the promoters have made, nay, more, if it is possible to put the parties back into their original positions, and there has been no undue delay on the company's part, the contracts between the company and the promoters can be rescinded by the Court. In many cases, however, this fraudulent taking of a secret profit is not discovered until the company goes into liquidation, and then damages are practically the only remedy. A common defence set up by promoters, when sued in respect of secret profits, is that in fact full disclosure was made to the company inasmuch as the directors of the company were fully aware of the true facts. This would be a good defence as against the company, providing the directors were independent of the promoters; but it is no defence if the directors owe their appointment to the promoters under circumstances which make them then the nominees or willing to consider the interests of the promoters rather than those of the company, which by the favour of the promoters is to pay them their salary. On the other hand, if full disclosure has been made in the prospectus, it is immaterial that the directors are not independent; but it is not full disclosure to set out in the prospectus that a certain contract was entered into which members of the public can inspect if they wish at the offices of the solicitors to the company. The public have a right to know the profits made by the promoters, without having to inspect documents. Provided that it is disclosed in the prospectus, the remuneration of the promoters may take any form—cash, shares, an option to take unallotted shares within a stated period, or other conceivable consideration. As regards preliminary expenses, the Articles of Association may give the directors power to pay a fixed sum to the promoters in respect thereof. Such an Article in itself does not constitute a contract between the promoters and the company so as to entitle the promoters to sue the company; it only gives the directors power to pay the amount, and even then they must make due enquiry.

The promoters cannot make contracts on behalf of the company before the company is registered. Such contracts do not bind the company, nor can they be ratified by the company. Thus a promise by promoters on behalf of a company about to be formed to pay a stockbroker his fee of 100 guineas will not bind the company. The company may adopt the contract, but it is not bound to do so.

THE FORMATION OF COMPANIES

To form an incorporated company (other than a private company), at least seven persons must subscribe their names to the Memorandum of Association. A banking company consisting of more than ten persons, and any company carrying on any other business for gain consisting of more than twenty persons, must be registered under the Companies Act, unless formed under a private Act or by letters patent, or unless it is a company engaged in working mines within the Stannaries and subject to the Court exercising the Stannaries' jurisdiction. Companies for other purposes than for gain may in most cases register under the Act, e.g. literary societies. (See Chapter V of this Part.)

Questions arise from time to time as to what is a business carried on for the purpose of gain. Gain does not necessarily mean pecuniary gain or commercial profits. The question is of importance,

for if an unregistered company consisting of more than twenty persons carries on a business for the purpose of gain, it is an illegal association; such an illegal association would not be recognized by the Courts, with the result that it would not be able to sue for any debts that might be due to it. This state of affairs not infrequently arises where an unregistered company commences business with less than twenty members, but subsequently its members increase to over twenty. In such an event, immediately the mistake is discovered, the company should be registered, and, if possible, a fresh acknowledgment of their debts obtained from the company's debtors. An unregistered company of more than twenty cannot be sued by its creditors; the position of creditors in such a case is analogous to that of creditors of a non-proprietary club; the creditors are forced to sue those persons who by themselves or their agents are responsible for the creation of the debt, usually the directors. The directors, under such circumstances, would have no right of indemnity against the assets of the company nor the remaining members. The Court will not make a winding-up order in respect to such a company, whether on the petition of the company itself or a creditor.

On the other hand, if a company carries on business for more than six months with its members reduced in number below the minimum, every member of the company who is cognizant of the facts is severally liable for the whole of the debts of the company contracted during that time, and may be sued for the same without joining any other member No doubt if one member paid the whole of the debts he could sue for contribution from the other members. Probably the only way of escape for a member who is cognizant of the fact, if his co-members insist upon trading, is to apply to the Court for an injunction to restrain his co-members from carrying on business.

Companies may be registered under the Act as (1) limited by shares, (2) limited by guarantee, (3) unlimited. Practically all companies are now limited by shares, and it will only be necessary to give a passing word to the other two classes. A company limited by guarantee has the liability of its members limited by the Memorandum of Association to such an amount as the members may thereby undertake to contribute to the assets of the company in the event of its being wound up. Such associations as mutual insurance societies, associations of employers to insure their employees, and the like have availed themselves of this class of registration. In the case of unlimited companies, the liability of the members is unlimited. It is extremely seldom that any company registers under these conditions.

THE MEMORANDUM OF ASSOCIATION

The Memorandum of Association, to which at least seven members, or two in the case of a private company, must subscribe in order to form an incorporated company, is a document which constitutes the charter of the company. An incorporated company is formed for certain purposes, and it has no power to effectuate anything outside or not incidental to these purposes, as will be shown later. It is the main function of the Memorandum of Association to set out what those purposes or objects are. The Memorandum must bear a stamp, and must be signed by each subscriber in the presence of a witness, who must attest the signature. The Form of Memorandum given in the third schedule of the Act as a guide is as follows:—

Memorandum of Association

FORM No. 1.

1st. The name of the company is "The Eastern Steam Packet Company, Limited".

2nd. The registered office of the company will be situate in England.

3rd. The objects for which the company is established are: "The conveyance of passengers and goods in ships or boats between such places as the company may from time to time determine, and the doing all such other things as are incidental or conducive to the attainment of the above object" (here follow general clauses taking more or less wide trading powers; see page 193).

4th. The liability of the members is limited.

5th. The share capital of the company is two hundred thousand pounds, divided into one thousand shares of two hundred pounds each.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this Memorandum of Association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names. (See table on p. 131.)

The Memorandum of a company limited by shares must state certain particulars: (1) The name of the company, with the word "Limited" as part of its name. No person may carry on business under a name of which the word "Limited" forms

Names, Addresses, and Descriptions of Subscribers			Number of Shares taken by each Subscriber.
1. John Jones, of	, in the county of	, merchant,	200
2. John Smith, of	, in the county of	, merchant,	25
3 Thomas Green, of	, in the county of	, merchant,	30
4. John Thompson, of	, in the county of	, merchant,	40
5. Caleb White, of	, in the county of	, merchant,	15
6. Andrew Brown, of	, in the county of	, merchant,	5
7. Cæsar White, of	, in the county of	, merchant,	10
	Total shares taken, ...		325

Dated the ..... day of ..... ., 19. .. Witness to the above signatures,

....

part without incurring a penalty of £5 for every day during which he so trades. (2) The part of the United Kingdom, whether England, Scotland, or Ireland, in which the registered office of the company is to be situate. (3) The objects of the company. (4) That the liability of the members is limited. (5) The amount of share capital with which the company proposes to be registered, and its division into shares of fixed amount.

The Name

A company may not be registered by a name identical with that by which a company in existence is already registered, or so nearly resembling that name as to be calculated to deceive. If a company is registered with a name which inadvertently offends against this rule, the registrar may permit the company to alter it. No person is allowed to adopt a name so resembling that of another as is calculated to deceive, on the principle that one person is not permitted to represent himself as carrying on the business of another. Every person has an absolute right to trade in his own name, no matter how the public may be misled into buying goods of his make under the impression that they are the goods of a better-known maker of the same or similar name. But an incorporated company has no such absolute right. Thus in the case of John Cash & Sons, Limited, *v.* Harwood Cash & Co., Limited, the first-mentioned company was a well-known company founded originally by one John Cash; Harwood Cash, a son of John Cash, was in the employ of the company. There was nothing to prevent Harwood Cash starting business in his own name, but what he did was to become a signatory to the Memorandum of Association of a new company, Harwood Cash & Co., Limited, admittedly without any fraudulent intent. The Court, having come to the conclusion that the name would cause and had caused confusion, restrained the further use of it. No company, however, can claim the monopoly of a descriptive name any more than a person can register a descriptive name as a trade mark. Thus the British Vacuum Cleaner Company, Limited, adopted a name descriptive of a process and not of a patent. The company could not, therefore, restrain the New Vacuum Cleaner Company, Limited, from the use of its name, although the similarity might well cause confusion (1907). If the name had been descriptive of the patent itself, the case might have been different. It is also possible for a descriptive name to acquire what is termed a secondary meaning; that is to say, the name becomes identified solely with the goods of a particular maker. It is extremely difficult to establish such a secondary meaning, and the onus is entirely upon the person setting it up; but once it is established and adopted as the name of a company, a company registering with a similar name would be restrained. Thus, in the case of *Reddaway v. Banham* (1896), the plaintiffs established the right to restrain the defendant from calling his belting "camel-hair belting", without clearly distinguishing his belting from that manufactured by the plaintiffs, inasmuch as "camel-hair belting", although purely descriptive, had for some years been identified with the goods manufactured solely by the plaintiffs. Probably in such a case, if the plaintiffs registered a company incorporating the name "camel-hair belting", the Court would restrain a company registering with a similar name, particularly if the company had been registered with any fraudulent intent. Under no circumstances can a company register with the same name as an existing company. Carelessness in selecting the name of the company may easily involve considerable expense.

A company may by special resolution, and with the written approval of the Board of Trade, change its name. A copy of the special resolution, with the reasons for the change, should be sent to the

Board of Trade, which in due course will notify the company of its consent or otherwise. A printed copy of the special resolution must be filed with the registrar, and the registrar upon notification of the consent of the Board of Trade will issue a new certificate of incorporation. The change of name does not in any way affect the legal rights and obligations of the company.

A company may not use the word "Royal" as part of its name without the consent of the Home Office.

The Registered Office

Every company must have a registered office, to which all communications and notices may be addressed. This is obviously essential, otherwise creditors, for example, would have no means of serving documents upon a company. Notice of any change of address must be given to the registrar. It is only necessary to set out in the Memorandum of Association the part of the United Kingdom, whether England, Scotland, or Ireland, in which the registered office of the company is to be situate. A company carrying on business without a registered address is liable to a fine of £5 for every day during which it so carries on business.

It is to be observed that the registered office of a company is no test of the residence of the company for the purpose of income tax A foreign corporation may reside in this country for the purposes of income tax. The test of residence is not where the company is registered, but where it really keeps house and does its real business. The real business is carried on where the central management and control actually abides. This was so decided in the case of that wealthy corporation, the *De Beers Consolidated Mines, Limited* (1905), whose registered office was in Kimberley, where local directors' meetings were held. But the more important meetings were held in London, and it was from London that the business was really controlled. The result was that the company had to pay income tax on the whole of its profits, and not merely upon the profits actually received in this country. The only way to get over the difficulty would be to remove the control altogether from this country, or at least to have no permanent office at all here, for a company without any abiding-place cannot be resident. In the case of an important company such a condition of things would of course be impossible.

In every case the question, where the residence and control are, is one of fact. A company registered in Germany, all the shares of which are held by an English company, is not necessarily "resident" in this country if it has its own board of directors, in spite of the fact that by reason of its voting power the English company could indirectly control the German company. This case actually arose in respect of the *Gramophone & Typewriter, Limited* (1906), where the Court held that the company was not liable to pay income tax upon the whole of the profits of a German subsidiary company (whose shares it held), but only upon such profits as had been received in this country. But it would have been otherwise if the board of directors had been the mere puppets of the English company. This was the case with the *Peter Schoenhofen Brewery Company, Limited* (1899), where the directors of the American company were the mere delegates of the English company, the officers and servants of the American company being appointed and dismissed by the English company.

Notice of Limited Liability

It is essential that persons should know that they are dealing with a limited company and not with a person who may be only a director of the company; for the credit of the individual whose liability is, of course, unlimited, may be much more desirable than that of a limited company. The Act, therefore, takes every precaution to ensure the notoriety of the company. The name must be painted or affixed in legible characters in a conspicuous position outside every office or place (not merely the registered office) where its business is carried on. The company is liable in default to a fine not exceeding £5 per day during the period of offence; in addition, every director who knowingly and wilfully authorizes or permits the default is liable to the like penalty. The name must be engraven in legible characters on its seal, and mentioned in legible characters on all notices, advertisements, and other official publications of the company, all bills of parcels, invoices, receipts, and letters of credit. Similarly the name must be mentioned in all bills of exchange, promissory notes, cheques, or orders for money or goods. In case of default, persons implicated are personally liable to the holder for the amount, unless the same is duly paid by the company. Directors cannot afford to treat this matter lightly, as any misdescription may impose a serious liability upon them. Thus the directors of a company registered as the *South Shields Salt Water Baths Company, Limited* (1889), were held to be personally liable to the holder of a bill of exchange for £133, 6s., which was directed to the "Salt Water Baths Company, Ltd., *South Shields*", and accepted by the directors on behalf of the "South Shields Salt Water Baths Company", the word "Limited" being omitted.

A company not for profit, but formed for promoting commerce, art, science, religion, charity, or any other useful object may be registered as, and enjoy all the privileges of, a limited company without the addition of the word "limited" to its name, if it obtains a licence from the Board of Trade. The licence may be revoked at any time, whereupon the registrar enters the word "Limited" at the end of the name, and the company must use the addition. The licence is granted subject to such conditions as the Board of Trade think fit, and such conditions, if the Board so direct, must be inserted in the Memorandum and Articles of Association, or in one of those documents. In applying to the Board for its licence the applicant should send a copy of the proposed Memorandum and Articles of Association, which in due course will be returned with corrections and necessary additions. A great number of charitable and other institutions have availed themselves of the privilege. The association has all the advantages of incorporation whilst retaining a name which carries with it no implication of profit earning. Such companies cannot, without the licence of the Board of Trade, hold more than two acres of land.

The Objects

The Memorandum under the Act is the fundamental and, except as stated below, the unalterable law of the company; it is incorporated only for the objects and purposes expressed in that Memorandum, which must be of a legal character. Any act not in accordance with the objects would be *ultra vires* and of no effect. Thus if the object of the company as stated in the Memorandum is to run omnibuses, it could not open a grocery shop; but it can do any act incidental to the carrying out of the objects. The law as to the powers of an incorporated company was clearly laid down in the famous case of *Ashbury Railway Carriage and Iron Company v. Riche* (1874). In that case the company attempted to make a contract outside the objects set out in the Memorandum, and the act was said to have been ratified by the whole body of shareholders. Lord Cairns said that the question was not as to the legality of the contract; the question was as to the competency and power of the company to make the contract. The contract was entirely beyond the objects in the Memorandum of Association, and was thereby placed beyond the power of the company. If so, it was not a question whether the contract ever was ratified or was not ratified If it was a contract void at its beginning, it was void because the company could not make the contract. If every shareholder had been in the room, and every shareholder had said, "That is a contract which we desire to make, which we authorize the directors to make, to which we sanction the placing of the seal of the company", the case would not have stood in any different position from which it then stood. The shareholders would thereby, by unanimous consent, have been attempting to do the very thing which, by the Act of Parliament, they were prohibited from doing.

Great care must therefore be taken in setting out the objects for which the company is to be formed, and the services of an experienced lawyer are indispensable. The main object of the company should be set out with every particularity, for it is highly inconvenient to those responsible for the success of a company to discover when they are about to enter upon a profitable contract either that they have no power at all to make it, or that there is a serious doubt as to their power. For it is often a nice question whether a proposed act is within the powers of the company; some acts are clearly outside, some are on the border line, and some are clearly within. It will be remembered that any person interested can petition the Court to restrain the company from doing any act which is outside its powers. To avoid any difficulty, it is usual to include the widest possible powers, and to prepare for future emergencies. Thus a company whose main object was to manufacture tobacco should undoubtedly include amongst its objects the power to open retail shops. There is nothing to prevent a company taking powers to carry on businesses having no connection whatsoever with each other, e.g. to carry on a theatre and the business of an undertaker, but it would obviously be mere waste of paper and money to set out businesses which the company would never be likely to carry on. Experience, however, has shown that it is wise to include in any case certain well-recognized powers, e.g. a clause authorizing the company to acquire any business similar to its own, or again, a clause authorizing the company to promote other companies which will benefit it, and usually there is a general power to the effect that the company is authorized "to do all acts incidental to and conducive to the above objects".

But this last clause is of little practical necessity, because the law will always uphold any act that is incidental to a stated object, and in this respect a very reasonable interpretation is conceded in the interests of trade. Thus, in order to carry on its business a company has an implied power to borrow money, engage servants and agents, accept bills of exchange; if its object

were to buy and sell a certain class of goods, the law would imply a power to lease premises upon which to conduct the business. A company cannot alter the conditions in its Memorandum of Association except as mentioned below, and then the alteration does not take effect until and except in so far as it is confirmed on petition by the Court.

Alteration of Provisions

A company may, subject to the sanction of the Court, alter the provisions of its Memorandum with respect to the objects of the company only so far as to enable it (*a*) to carry on its business more economically or more efficiently; (*b*) to attain the main purpose by new or improved means; (*c*) to enlarge or change the local area of its operations; (*d*) to carry on some business which, under existing circumstances, may conveniently or advantageously be combined with the business of the company; (*e*) to restrict or abandon any of the objects specified in the Memorandum. The Court may make an order confirming the alteration either wholly or in part, and in such terms and conditions as it thinks fit. Before confirming the order the Court must be satisfied (*a*) that sufficient notice has been given to every holder of debentures of the company, and to any persons whose interests will, in the opinion of the Court, be affected by the alteration; and (*b*) that with respect to every creditor who, in the opinion of the Court, is entitled to object, either his consent to the alteration has been obtained, or his debt has been discharged or has been secured to the satisfaction of the Court. The Court has not to consider the wisdom or desirability of the proposed alteration. In the exercise of its discretion it must have regard to the rights and interests of the members of the company, as well as to the rights and interests of the creditors, and may adjourn the proceedings in order that an arrangement may be made to the satisfaction of the Court for the purchase of the interests of dissentient members; but no part of the capital of the company may be expended in any such purchase An office copy of the order confirming the alteration, together with a printed copy of the Memorandum as altered, must be delivered by the company, subject to penalties if in default, to the registrar within fifteen days from the date of the order. The registrar registers and certifies the same, and thenceforth the Memorandum so altered is the Memorandum of the company.

It will be observed that except in the above-mentioned cases it is impossible to alter the objects in the Memorandum. In other cases, if it is essential to alter the objects, it must be done by reconstruction—that is, by winding up the company and forming a new one in its place—and even where the case is possibly one which can be managed by a special resolution confirmed by the Court, it may be desirable sometimes to proceed by the more costly method of reconstruction. Still, advantage has been taken of the simpler method in thousands of cases since 1890, in which year the legislature first introduced this method. Thus many companies have seized the opportunity of revising their existing objects, which, owing to lack of experience, were in the early years framed in a cramped manner, making it doubtful whether the company had or had not power to do certain acts. By framing the objects in wider and more general terms the difficulty for the future would be obviated and the doubt removed. But the Court usually requires a specific purpose; it would not pass a mere generality of words which would include any object under the sun.

Again, a company may wish to enlarge the local area of its operations, as where it is formed to carry on banking operations in Argentina, it may desire to extend its business to Brazil. In this class of case, if the name of the company is descriptive of the area in which it trades, the Court, as a condition of its consent, usually demands that the name of the company be altered. Thus, if the bank be called the Argentine Bank, Limited, the Court would probably require that the name of the company should be changed to some such form as Argentine and Brazilian Bank, Limited. This is only reasonable, because new customers and shareholders might otherwise be under the impression that the operations of the bank were still confined to Argentina, as the old name indicated, whereas if they were aware that its operations were more extensive, they might have nothing to do with it.

Cases in which a company may desire to carry on some different business in conjunction with its own will readily occur. But in some cases it may be desirable to restrict or abandon some of its objects, as in the case of a sale of a branch of the business, for so long as it is part of the Memorandum, the company by its board of management has the power to carry it out, whereas if it be deleted any attempt to carry it out would be beyond the company's powers. In one case a Memorandum contained, as one of its primary objects, a power to promote immigration or emi gration of persons of the Jewish race to or from any country in the world, and particularly emigration to Syria, Palestine, and other countries in the East. Application was made to the Court to restrict the object to emigration to Syria and

Palestine, because an attempt was being made to colonize elsewhere, which, in the opinion of the majority of the board of control, was undesirable. In this particular case the Court refused to sanction the alteration because the shareholders, representing over three-fourths of the share capital, objected to the proposed alteration.

Amount of Share Capital

Lastly, the Memorandum must state the amount of share capital with which the company proposes to be registered, and its division into shares of a fixed amount This, of course, only refers to the nominal capital, and has nothing to do with the amount of capital to be actually issued, which seldom is the whole of the nominal capital. The question of the amount of the capital should be carefully considered. As will be seen later, a company has power to increase its nominal capital, but it may be expedient to provide for future expansion by starting the company with a greater share capital than its immediate requirements warrant. At the same time, the question of expense has to be considered. It may be well, therefore, to state here the table of fees to be paid to the Registrar·

For registration of a company whose nominal share capital does not exceed £2000 . .	£2 0 0
For every additional £1000 or part thereof up to £5000	1 0 0
For every additional £1000 or part thereof up to £100,000 . .	0 5 0
For every additional £1000 after £100,000	0 1 0

There is also a fee stamp on the Memorandum of Association of £2 on capital between £100 and £2000; £3 on £3000; £4 on £4000; £5 on £5000; and a duty thereafter, varying with the amount of the nominal capital.

For registration of any increase of share capital made after the first registration of the company, the same fees must be paid per £1000 or part thereof as would have been payable if the increased share capital had formed part of the original share capital at the time of registration, provided that no company is liable to pay in respect of nominal share capital on registration or afterwards any greater amount of fees than £50, taking into account, in the case of fees payable on an increase of share capital after registration, the fees paid on registration.

For registering any document required or authorized by the Act to be registered other than the Memorandum	5s. 0d.
For making a record of any fact required or authorized by the Act to be recorded by the registrar	5s. 0d.

It is not essential to state in the Memorandum the different classes of shares into which it is proposed to divide the nominal capital, a matter which is always dealt with in the Articles of Association discussed below. Still, it is quite common to insert the details in the Memorandum with the object of giving confidence to the various classes of shareholders, for, being part of the Memorandum, the conditions are unalterable, except by the expensive and dilatory method of reconstruction. The share capital is commonly divided into preference and ordinary shares, and occasionally deferred shares and founders' shares.

The distinction between these various classes of shares is based upon the priority of payment of dividend, there may or may not be a priority as to repayment of capital in the event of liquidation. The reasons that usually dictate the division of the capital into preference and ordinary shares are found in this, that amongst the investing public there are always present two classes, one preferring a low rate of interest accompanied by reasonable safety, the other prepared to take risks in the hope of a larger reward. But there are other reasons. A wealthy trader, assured of the future success of his business, may require to expand it by means of fresh capital, but instead of borrowing at, say, 4½ per cent per annum money which can at any time be recalled, he turns his business into a limited company, secures all the permanent fresh capital he requires by the issue of an appropriate amount of 4½-per-cent preference shares, and retains all the ordinary capital for himself, with the intention of reaping the whole of the benefit of the expansion.

Usually the conditions provide for a certain preferential rate of interest to the preference shareholders, and then for the balance of the profits to be paid to the ordinary shareholders. If nothing is said to the contrary, this interest is cumulative; that is to say, any interest that is not paid in one year to the preference shareholders must be made up out of subsequent profits before the ordinary shareholders receive anything. To make this obvious to the investing public, the word "cumulative" is often, though unnecessarily, added to the description of the share. In order to show the contrary, words clearly indicating the same must be used. By far the best, as involving no ambiguity whatsoever, is the expression "non-cumulative", but words expressing that the interest is to be paid out of the profits for each year would have the same result. It is, however, possible to attach any condition to preference shares, providing it is not illegal. Thus, in order to make the shares more attractive to investors by giving them an interest in the expansion

and success of the business, it is common to stipulate that, after the preference shares have received, say, 5 per cent out of the year's profits, the ordinary shares shall receive, say, 10 per cent, and then the surplus profits, if any, shall be equally divided between the two classes of shares.

Another class of share has become very common, viz. deferred shares. The dividend on these shares, if any, is paid out of the surplus profits after the preference and ordinary shares have received a stated rate of interest. This arrangement makes the ordinary shares really preference, as the interest is payable prior to the interest on the deferred shares. The stipulation may be for the whole or part only of the surplus profits to be paid to the deferred shareholders. It is quite usual for the vendors to take a large proportion, if not the whole, of the deferred shares in part payment of their purchase money, and such a course shows the vendors' confidence in the success of the business as a company. Experience teaches, however, that the deferred shares are in many cases mere gambling counters, dealt in on the stock exchange at a low price, fluctuating violently when the dividend is about due, corresponding to rumours that the directors may or may not squeeze out of the year's profits a small dividend on the shares.

Founders' shares are very similar to deferred shares, in that it is usually provided that no dividend is to be paid upon them until a stipulated rate of interest has been paid upon the other classes of shares. When the number of shares is few and it is the intention of the vendors to retain them, the shares are commonly designated as "founder shares"; but when the number is great, and it is intended to market them when and as convenient, they are more commonly called "deferred".

Sometimes one meets with the designation of Preferred Ordinary and Deferred Ordinary shares. This classification is resorted to when it is thought desirable to split up an existing preference share. Suppose preference shares of the nominal value of £10 each to be entitled to a non-cumulative dividend of 6 per cent. The shares are split up into two shares of £5 each for each old £10 share, one of which, the preferred share, is to receive 6 per cent before the other receives anything. The result is that the new preferred ordinary share is a safer security than the old preference share, as the company need only earn half the profits to pay the necessary dividend, whilst the new deferred share is a poor security, as it can only receive at the most 6 per cent, and receives nothing till the preferred ordinary shares receive their due. The result, however, is usually to make both the new classes of shares more marketable than the old, because the preferred ordinary become a better secured investment, while the deferred ordinary shares have the enticing element of speculation about them.

Unless expressly stipulated, preference shares have no priority as to repayment of capital in the event of the company being wound up.

ARTICLES OF ASSOCIATION

The Articles of Association are the rules, the by-laws, the regulations which govern the internal or domestic arrangements of the company in the course of carrying out the objects, specified in the Memorandum, for which the company was formed. To refer again to the case of *Ashbury Railway Carriage and Iron Company v. Riche* (1874), Lord Cairns referred to the marked and entire difference there was between the two documents which form the title deeds of companies of this description: the Memorandum of Association on the one hand, and the Articles of Association on the other hand. The Memorandum of Association was, as it were, the charter, and defined the limitation of the powers of a company to be established under the Act. The Articles played a part subsidiary to the Memorandum of Association. They accepted the Memorandum as the charter of incorporation of the company, and so accepting it, the Articles proceeded to define the duties, the rights, the powers of the governing body as between themselves and the company at large, and the mode and form in which the business of the company was to be carried on, and the mode and form in which changes in the internal regulations of the company might from time to time be made. With regard, therefore, to the Memorandum of Association, if they found anything which went beyond that Memorandum or was not warranted by it, the question would arise whether that which was done was *ultra vires* not only of the directors of the company, but of the company itself. With regard to the Articles of Association, if they found anything which, still keeping within the Memorandum of Association, was a violation of the Articles of Association, or in excess of them, the question would arise whether that was anything more than an act *ultra vires* the directors but *intra vires* the company.

It will be seen that any regulation or article

which is inconsistent with or contrary to the Memorandum of Association, or to the law of the land, will be utterly void For example, suppose the Memorandum contains a condition that the preference shares shall be non-cumulative, it is useless for the Articles to empower the directors to pay a cumulative dividend to the preference shareholders Again, it is useless for the Articles to provide that the company may increase its capital by an ordinary resolution, because the Statute specifically states that the power can only be exercised by special resolution.

But although the Articles cannot be inconsistent with or extend the objects of the Memorandum, they may help to throw light upon the Memorandum in respect to points upon which the Memorandum is silent, or ambiguous. Thus, a power in the Articles to mortgage future calls or issue preference shares is good, although not specifically dealt with in the Memorandum.

The Articles must be printed; be divided into paragraphs, numbered consecutively; bear the same stamp as if they were contained in a deed; and be signed by each subscriber of the Memorandum of Association in the presence of at least one witness, who must attest the signature, and that attestation is sufficient in Scotland as well as in England and Ireland.

Table A

A company limited by shares may register, with its Memorandum, Articles of Association. If it does not do so, then the Articles contained in Table A set out in the Schedule to the Act are the Articles governing the company. Even if the company registers its own Articles, Table A applies, except in so far as the Articles do not modify or exclude the regulations therein. Most companies prefer to register their own Articles of Association, but some are satisfied with Table A, whilst others adopt Table A with a few modifications to suit their special requirements. Table A forms a good idea of what the Articles should consist, but usually more special powers are required. The regulations in Table A, like other forms provided in the Act, may be altered by the Board of Trade. It is unnecessary here to set out the contents of Table A. Briefly, it contains regulations as to the share capital, right of lien on shares not fully paid up, powers of directors to make calls, method of transfer of shares, forfeiture of shares, power to convert shares into stock, power to issue share warrants, alteration of capital, general meetings, method of voting, powers and duties, proceedings and election of directors, authority to affix seal, disqualification of directors, dividends and reserve, accounts, audit, service of notice. These matters will be dealt with later.

Alteration of Articles

A company may, by special resolution, alter or add to its Articles, and such alteration or addition is subject in like manner to alteration by special resolution. No company can deprive itself of this privilege, for example, a regulation to the effect that a certain provision shall be unalterable is nugatory. The Articles cannot be altered so as to alter the constitution of the company as laid down in the Memorandum.

The Court will not interfere with the internal management of the company. No matter how hard an alteration in the Articles may hit a certain shareholder or class of shareholders, the majority can carry it; no matter how much it may depart from the original contract, as embodied in the Articles under which the shares were subscribed for, still it is part of that contract that the Articles can be altered by special resolution, and that contract must be observed. The majority rules the minority. An alteration may even have a retrospective action, e.g. an Article could be inserted so as to give a lien upon a shareholder's shares for debts incurred before the alteration. The only limit to the power of the majority to bind the minority is when the object is to defraud or oppress the minority, or where there is an absence of good faith. As was said in the leading case of *Menier v. Hoopers' Telegraph Company* (1874), "where the majority of a company propose to benefit themselves at the expense of the minority, the Court may interfere to protect the minority".

The Memorandum and Articles, when registered, bind the company and the members to the same extent as if they had been signed by each member, and as if each member had covenanted for himself, his heirs, executors, and administrators, to observe all the provisions of the Memorandum and Articles.

The Articles constitute a contract between the company and each of the members. If the company is about to commit a breach of its regulations, a member can bring an action to restrain or enforce them. But the Articles do not constitute a contract between the company and persons who are not members. Thus, where they provided that a certain person should be employed as solicitor to the company, the solicitor had no right of action against the company when the directors refused to employ him, there being no direct contract between the company and the solicitor. It would make no difference that the solicitor

himself was a shareholder, because the regulation would not provide for his employment as being a shareholder, but as a person outside the company. The Court, however, inclines to assist parties under such circumstances if it sees a means of doing so. Thus the regulation might state the exact terms upon which the directors should have power to engage the services of a named person, e.g. an auditor at £100 a year. If in such a case the auditor named did work for the company, under the impression that the regulation in question constituted his contract, and subsequently the company refused to pay him on that basis, the Court would assist him, for by accepting the services of the auditor a contract would be established between the company and the auditor, and there being no terms mentioned, the Court would imply the terms which both parties must have had in their minds, viz. the terms set out in the Articles.

When a shareholder is aggrieved at the action of the directors or his co-shareholders either in respect to any matter touching himself or the interests of the company, care must be taken that the action is launched with the right parties as plaintiff and defendant. It is clear law that in order to redress a wrong done to the company, or to recover money or damages alleged to be due to the company, the action should be prima facie brought by the company itself. But an exception is made to this rule where the persons against whom the relief is sought themselves hold and control the majority of the shares of the company, and will not permit an action to be brought in the name of the company. In that case the Courts allow the shareholders complaining to bring an action in their own names. In such an action the plaintiffs cannot have a larger right to relief than the company itself would have if it were plaintiff, and cannot complain of acts which are valid if done with the approval of the majority of the shareholders, or are capable of being confirmed by the majority. The cases in which the minority can maintain such an action are, therefore, confined to those in which the acts complained of are of a fraudulent character or beyond the powers of the company. A familiar example is where the majority are endeavouring directly or indirectly to appropriate to themselves money, property, or advantages which belong to the company, as was alleged in the case of *Menier v. Hoopers' Telegraph Company* referred to above.

CERTIFICATE OF INCORPORATION

The Memorandum and the Articles (if any) must be delivered to the registrar of companies for that part of the United Kingdom in which the registered office of the company is stated by the Memorandum to be situate. He retains them and registers them, giving a certificate of incorporation in the following terms: "I hereby certify that the Company, Limited, is this day incorporated under the Companies Consolidation Act, 1908, and that the company is limited".

A certificate of incorporation given by the registrar is conclusive evidence that all the requirements of the Act in respect of registration and of matters precedent and incidental thereto have been complied with. The certificate cannot be impeached even though it be alleged that the signatures of the subscribers to the Memorandum are mere forgeries.

A company must send to a member, upon his request, a copy of the Memorandum and Articles of Association (if any) on payment of one shilling or such less sum as the company may prescribe. In default, the company is liable to a fine of £1 for each offence.

THE DIRECTORS

The First Directors

The Articles usually set out the names of the first directors of the company or give powers to the signatories to the Memorandum to appoint them. If the company adopts Table A as its Articles of Association, under clause 68 the number of directors and the names of the first directors must be determined in writing by a majority of the subscribers of the Memorandum of Association. If the company does not adopt Table A, and its Articles are silent as to any provision for first directors, then any five members can call a meeting, and the meeting can appoint directors.

The statute enacts that a person shall not be capable of being appointed a director of a company (other than a private company), and shall not be named as a director or proposed director of a company in any prospectus issued by or on behalf of the company, or in any statement in lieu of prospectus filed by the company, unless before the registration of the Articles or the pub-

lication of the prospectus or the filing of the statement in lieu of the prospectus he has by himself (or his agent authorized in writing) signed and filed with the registrar of companies a consent in writing to act as such director, and either signed the Memorandum for a number of shares not less than his qualification (if any), or signed and filed with the registrar a contract in writing to take from the company and pay for his qualification shares (if any) On application for registration of the Memorandum and Articles, the applicant must deliver to the registrar a list of persons who have consented to be directors of the company, and if this list contains the name of any person who has not consented, the applicant is liable to a fine not exceeding £50. These remarks do not apply to a prospectus issued after the expiration of one year from the date at which the company is entitled to commence business.

Qualification Shares

It is not essential that a director should have any qualification shares at all, unless required by the constitution of the company, but very few, if any, companies in practice fail to require that a director should have some holding in the company. Shareholders naturally like to know that those who direct the helm have sufficient faith in the ship to embark some of their own capital in the venture. But in numerous cases directors, whilst pocketing their fees for being mere figureheads, have been very prone to forget to take up their qualification shares. This the law does its best to prevent by compelling the first directors of the company to enter into an undertaking to take their qualification shares. A director cannot accept a gift of his qualification shares from the promoters or vendors, for that would be a gross breach of trust to the company; if he does so, he must account for their value, for, as agent and trustee of the company, he cannot behind the company's back accept what is really part of the purchase money. Nor can he accept an indemnity from the promoters. There is, however, nothing to prevent him, in order to qualify, holding the requisite number of shares in trust for some other person, even though the regulations provide that he must hold the shares in his own right.

A director must obtain his qualification shares within two months after his appointment, or such shorter time as may be fixed by the regulations of the company. If he does not, he vacates his office and cannot be reappointed to it until he has actually obtained the qualification; if he attempts to act as director after his office is vacated, he is liable to a fine not exceeding £5 for each day between the expiration of the said period and the last day on which it is proved that he acted as director. But the acts of a director or manager are valid, notwithstanding any defect that may afterwards be discovered in his appointment or qualification. Every company must keep at its registered office a register containing the names and addresses and the occupations of its directors or managers, and send to the registrar a copy, and from time to time notify him of any change, the penalty being a fine not exceeding £5, for which the company and any director or manager who knowingly and wilfully authorizes or permits the default are liable.

Remuneration of Directors

A company cannot act by itself. It must act by agents. The final control of the management of the company's affairs is no doubt in the hands of the shareholders, but it would be quite impossible to carry on the business with such an unwieldy body. The management is consequently entrusted to the hands of a few persons who are usually called directors, and who bind the company by their acts. So far as third parties are concerned, the relationship between the company and its directors is that of principal and agent. There is no magic in the word director; so long as a person is given the powers of a director, the name given to him is immaterial—it may be "governor" or "member of committee of management", &c. The Articles of Association usually regulate all matters concerning the directors. They fix the number of directors and their share qualification, which has already been considered.

The remuneration should be fixed by the Articles. A director is not entitled as of right to remuneration unless it is so provided for. Once it has been earned, it may be paid out of the funds of the company whether a profit is being earned or not, and the director may sue for it as for a debt. Usually the remuneration is fixed at an annual sum. If the director resigns before the end of the year, it is often very difficult to decide whether he is entitled to any proportionate part of the remuneration; each case must turn upon the particular words of the Article.

Powers of Directors

Usually the widest powers are given to the directors to manage the business of the company (including the power to borrow money to a more or less limited extent discussed below). The directors, being agents of the company, cannot do any act which the company itself has not

power to do, that is to say, so as to make the company liable; although they may be liable themselves, as in the case of any other agent who acts beyond the scope of his authority. It must be noticed that a company, by its directors, has full power to enter into contracts.

In the case of a company, contracts that might be made verbally by private persons may be made by any person authorized by the company to make them. In the case of contracts required to be in writing, to be signed by the parties charged therewith, such contracts where the company is a party thereto may be signed by any person authorized by the company. Where contracts can only be made by deed under seal, such contracts where a company is concerned may be made in writing, under the common seal of the company. Every company has its common seal, and the Articles of Association usually provide for the manner in which such seal shall be affixed to documents. Usually it can only be affixed upon a resolution of the Board of Directors to that effect in the presence of two Directors, who sign against the seal together with the Secretary of the company.

A company can give a general power of attorney or a special power of attorney under its common seal to execute deeds abroad on behalf of the company. Where a company transacts business in foreign countries it may, if its Articles so permit, keep an official seal in such countries, and may authorize its agent by writing under seal to affix such duplicate seal on behalf of the company, certifying thereon the date and place of affixing the same.

As between the company and any person dealing with the agent, the company will be bound by all acts of the agent within the period, if any, named in the instrument whereby he is empowered to affix the seal; if no period be mentioned, then until such time as notice of the determination of the agent's authority has been given to the person dealing with him.

A bill of exchange or promissory note is made, accepted, or endorsed on behalf of a company if it be made, accepted, or endorsed in the name of, or by, or on behalf, or on account of the company by any person acting under its authority. It is necessary to use care in following out the requirements of the statute in this respect, otherwise a person intending to sign a bill on behalf of the company may make himself personally liable without the slightest intention of doing so. One of the first essentials is to take care that the name of the company is absolutely correctly described in every detail, and particularly that the word "Limited" is not omitted. Secondly, no danger is likely to ensue if the persons authorized to sign the bill take good care to use the words "for" or "on behalf of" the company concerned. Supposing the Articles require bills of exchange to be signed by two Directors and countersigned by the Secretary, the following would be the proper form of acceptance "Accepted for the Company, Limited, and by its authority, payable at the Bank of England. A, B, Directors; (countersigned) C, Secretary."

Directors must use their powers with due diligence; if they are grossly negligent, they may be liable to the company for any damage which the company has sustained by reason of their conduct. Directors are, to a certain extent, trustees of the company Thus they are trustees of the assets of the company; like trustees, they cannot derive any benefit to themselves by reason of the position which they hold, particularly they cannot retain any bribe or commission which they may have received from third persons in connection with any business transacted on behalf of the company. Similarly, they cannot allow their duty and interest to conflict. Thus they cannot themselves contract with the company, for there would be the obvious temptation to better their own position at the expense of their principal, the company This may be disadvantageous to the company, as in many cases the company can contract more favourably with its own director than with any other party. To obviate this difficulty, the Articles may provide that any director may enter into contract with the company, providing he discloses the matter to the Board of Directors, and does not vote with the Board on the question of its acceptance. If the company takes action against a director for negligence or breach of trust, the Court may relieve him although liable, if it is of opinion that he has acted honestly and reasonably, and ought fairly to be excused.

The Articles should provide that the office of director should become vacant if he fails to obtain his qualification shares, or holds any office of profit under the company except that of managing director or manager, or becomes bankrupt, or is found lunatic or becomes of unsound mind, or is concerned or participates in the profits of any contract with the company (which may be modified in the manner referred to above). It is usual to provide for a certain number of directors to retire by rotation at each annual meeting, the retiring directors being eligible for re-election; casual vacancies to be filled up by the directors and approved by the company at the next annual meeting. Provision should be made that the company may at any time remove a director from office. If a managing director is appointed,

not desirable that he should retire by rotation

The Articles should regulate the proceedings of directors. They usually act as a Board with regular meetings, of which reasonable notice is given. Questions raised at the meeting are decided by the majority of votes, and in the case of equality usually the chairman is given a second or casting vote; any director may summon a meeting; the directors should fix the quorum necessary for the transaction of business. The directors have power to delegate their powers to a committee of their own members.

It should be provided that all acts done by any meeting of the directors, or by a committee of directors, or by any person acting as a director shall, notwithstanding any defect in the appointment of any such persons or that any of them were disqualified, be valid as if every such person had been duly appointed and was qualified to be a director.

Although the company in general meeting declare the dividend, it is usual to provide that no dividend shall exceed the amount recommended by the directors.

THE PROSPECTUS

The next matter to be considered is the prospectus, by means of which it is intended to invite members of the public to subscribe to the capital of the company. It is not essential to make a public appeal for subscriptions; the shares can be issued privately. But the majority of substantial companies do appeal publicly for subscription by means of a prospectus, although not so many as in earlier days, owing to the stringent statutory requirements now in force.

A prospectus, from the point of view of the law, means any prospectus, notice, circular, advertisement, or other invitation offering to the public for subscription or purchase any shares or debentures of a company. A prospectus may be issued before the intended company is actually registered, but in any event when issued it must be dated, which date shall be taken as the date of publication until the contrary is shown. Before the date of publication a copy signed by every named director or proposed director therein, or his agent authorized in writing, must be filed with the registrar. There is a penalty not exceeding £5, payable by the company and every person knowingly in default.

The prospectus is to induce the investor to believe that the company is a safe concern in which he may place his money. It will contain, according to the nature of the business that the company is to carry on, all relevant information to enable the ordinary business man to form a reasonable judgment as to the merits of the concern and the prospect of its success. The amount of information that the prospectus may contain may be unlimited or practically *nil*, in which case the wise investor will not poke his head into a bag; but an honest prospectus should at least conceal nothing which is of materiality to enable a business man to form a sound judgment, nor should it contain a deliberate misstatement. The remedies of the shareholder upon discovering that he has been induced to take shares by reason of a misleading prospectus will be dealt with below; but these remedies, when they exist, come very often too late to be of any value. In order to protect the investor as much as possible, the legislature has insisted that the prospectus, whether in respect of an original issue or a subsequent issue of shares or debentures, must contain certain items of information which, to some extent at least, will enable the investor to form a reliable judgment on the merits of the concern. The more important of these matters are as follows. The prospectus must set out, except where it is advertised in a newspaper—

(*a*) The contents of the Memorandum, the number of founders' or management or deferred shares, and the nature and extent of the interest of the holders in the property and profits of the company.

The object of insisting upon the rights of the founder shareholders being disclosed is that these rights are frequently of an onerous and extensive nature.

(*b*) The qualification shares (if any) required to be held by the directors, and any provision in the Articles as to their remuneration; the names, descriptions, and addresses of the directors or proposed directors.

(*c*) The minimum subscription on which the directors may proceed to allotment. (See page 145.) In the case of a second or subsequent offer of shares, the amount offered for subscription on each previous allotment made within the two preceding years, and the amount actually allotted and the amount (if any) paid on shares so allotted.

(*d*) The number and amount of shares and debentures within the two preceding years issued or agreed to be issued other than for cash, and the consideration for such. This information is obviously of importance to the investor.

(*e*) The names and addresses of the vendors of any property acquired or proposed to be acquired

which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus, or the purchase or acquisition of which has not been completed at the date of issue of the prospectus, and the amount payable in cash (and actually paid, if any) and in shares or debentures to the vendor, or, if more than one, or the company is a sub-purchaser, the amount so payable to each vendor. As to material contracts other than the above, it is only necessary to state the date and parties thereof, and a reasonable time and place where they can be seen; contracts in the ordinary course of business entered into more than two years before the date of the issue of the prospectus need not be mentioned at all.

The expression "vendor" in respect to the above has a wide meaning. It includes any person who has entered into any contract, absolute or conditional, for the sale of property to the company in any case where (1) the purchase money is not fully paid at the date of the issue of the prospectus (in many cases the property is fully paid, viz. where the company has been in existence for some time and is making a fresh issue of shares; in such a case it is, of course, unnecessary to require the prospectus to set out property sold to the company at its inception and paid for); (2) the purchase money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus; (3) the contract depends for its validity or fulfilment on the result of that issue, this prevents the first vendor making a sale to a person who sells to the company on the understanding that the first vendor does not get paid unless the intermediary vendor gets paid The above requirements compel, to a very large extent, the disclosure of contracts where the company is a sub-purchaser. Where the first sale is a *bona fide*, out-and-out sale, the purchase money being paid, there is not very much danger, especially when it is remembered that promoters are in a fiduciary position towards the company. Where the company acquires leasehold property, the lessor is deemed to be the vendor.

(*f*) The amount payable (if any) in cash shares or debentures for goodwill.

This is a very useful provision, inasmuch as companies have an unfortunate habit, when not successful, of lumping in the amount payable for goodwill with other assets in the balance sheet, with the result that the shareholders and others have no knowledge of what the tangible assets are really worth. In the case of companies registered since the year 1900, this information can be traced by examining the filed prospectus.

(*g*) The commission (if any) paid within the two preceding years or payable to underwriters. This does not apply to sub-underwriters.

Underwriting

The underwriting of shares and debentures is very expedient in the flotation of a company. It is a species of insurance No matter how sound and *bona fide* the proposals of a company may be, its flotation may easily hang fire owing to some disturbing element or rumour. To obviate this danger, it is usual to underwrite the issue; that is to say, persons are found who, for an agreed consideration, undertake to apply rateably for shares in the event of the public not applying. The usual form of the contract is that the underwriter in a letter agrees to take the shares, if not allotted to the public, in consideration of an agreed commission.

This letter must be formally accepted to make a complete contract. Usually the agreement embodies an authority by the underwriter to apply for the shares in his name if the occasion arises. Such an authority is irrevocable, and may bind the underwriter even though the agreement has not been accepted by the person to whom the authority is given, provided that the company quite innocently allots the shares on the faith of the authority. The offer of the underwriter may be accepted after the list is closed. Sometimes it contains a condition that the underwriter's authority can only be exercised if the underwriter himself makes default. In such case the authority can only be used if the underwriter himself refuses to apply.

The form that the consideration takes varies in accordance with the particular circumstances of the case. Sometimes it is a small or large percentage of the nominal capital underwritten; sometimes it is a lump sum, when, for example, the promoting syndicate underwrite the whole issue for an agreed sum, intending to sub-underwrite the issue with a number of persons at an agreed rate of commission; sometimes it takes the form of fully paid shares, or the right to call for shares at par within a given period, a very valuable right if the shares go to a substantial premium.

Before the year 1900 it was extremely doubtful whether a company could itself agree to pay a commission to underwriters, on the ground that it really amounted to issuing shares at a discount, which was, and is, beyond the powers of a company. But legislation has since sanctioned payments for underwriting, subject to certain conditions: (*a*) It must be authorized by the Articles; (*b*) in the case of shares offered to the public, it must be disclosed in the prospectus; (*c*) in the case of shares not offered to the public for sub-

scription, it must be disclosed in the statement in lieu of prospectus and also in a circular or notice (if any) not being a prospectus, inviting subscription.

Save as aforesaid, no company can apply any of its shares or capital money directly in payment of any commission, discount, or allowance, and in particular it cannot be so applied by adding it to the purchase money of any property acquired by the company or to the contract price of any work to be executed for the company. Thus if the real value of a piece of land to be taken over is £1000, the company cannot agree to pay £1500, the extra £500 being intended for some other purpose, say in the nature of a discount for shares which the vendor appears to take up at par. But a vendor or promoter may apply any part of the money or shares, in which he receives payment, in payment of any commission that the company itself might make. Further, the company is authorized to pay the customary brokerage to those who procure persons to apply for shares. The usual rate is 3*d.* to 6*d.* on each £1 share, which the company pays to all stockbrokers whose clients apply for shares, it being the custom in a stockbroker's office upon request to obtain an application form for shares, stamp it with his name, and forward it to his client. If the client applies, the company sees to whose introduction it is indebted, and in due course the stockbroker receives his commission.

Where a company has paid any commission by way of underwriting, the total amount so paid, which has not been written off, must be stated in every balance sheet until it has been written off out of profits.

(*g*) The amount or estimated amount of preliminary expenses.

Preliminary Expenses

It is usual for the Articles to give the directors power to pay these expenses, which include *inter alia* legal and advertising expenses, which alone, in the case of an important formation, would account for a large sum. As has been stated above, the provision in the Articles does not amount to a contract between the company and those who have rendered services or paid moneys prior to the formation of the company that the company will pay or re-imburse them. Thus a solicitor could not recover his legal charges, including the disbursements he had made for counsel to settle the Memorandum and Articles of Association; but he would be allowed to recover the fees paid upon registration of the company under a general principle of law that he had paid money which the company was under a statutory liability to pay itself. It is to be noted that even though the company has had the benefit of services, &c, rendered prior to its formation, that fact in itself does not impose any liability upon the company to pay.

Although the Articles may empower the directors to pay the preliminary expenses, they are not relieved from the duty of enquiring into claims made in respect thereof.

(*h*) The amount paid or intended to be paid within the two preceding years to any promoter, and the consideration for any such payment.

(*i*) The names and addresses of the auditors (if any appointed) of the company.

(*j*) Full particulars of the nature and extent of the interest (if any) of every director (or his firm) in the promotion of, or in property to be acquired by, the company.

(*k*) If the capital of the company is divided into more than one class of share, the respective voting powers of each class.

The above requirements do not apply to a circular inviting existing members or debenture holders to subscribe to a fresh issue, even though it be accompanied with a right to renounce in favour of another person, but they do apply to every other prospectus, whether issued with reference to the formation of a company or subsequently. The requirements as to the Memorandum, qualification, remuneration and interest, names, descriptions and addresses of directors or proposed directors, and the amount or estimated amount of preliminary expenses, do not apply in the case of a prospectus issued more than one year after the date at which the company is entitled to commence business.

A condition whereby the applicant for shares purports to waive compliance with the above requirements is void. The directors and others responsible are not liable to any fine or penalty for non-compliance with the above requirements; the shareholder who has applied on the faith of the prospectus is left to his remedy by way of damages. And a person is not liable by reason of non-compliance if he proves (and the onus is upon him to prove, except in the case of setting forth the interest of the directors, where it must be definitely proved that he had knowledge of the matters not disclosed): (1) he was not cognizant thereof; or (2) the non-compliance arose from an honest mistake of fact on his part: he cannot plead that he did not know he was compelled to disclose the matter in question, for it is his business to find out the law.

As may be readily imagined the necessity of compliance has made the issue of a prospectus

very burdensome; and where a company does not issue a prospectus on or with reference to its formation, it is now enacted that it shall not allot any of its shares or debentures unless before the first allotment there has been filed with the registrar a statement in lieu of prospectus, signed by every person who is named therein as a director or proposed director of the company, or by his agent authorized in writing This statement must be in the form given in the Act, and practically consists of the same details as those required to be set out in a prospectus. Consequently by searching the file the investor in a new concern can at once ascertain certain particulars which will be of material assistance to him in forming a judgment as to its worth.

Apart from the above statutory requirements, there is no liability upon the company or the directors to disclose any particular facts, however material such facts may be to enable an applicant for shares to form a proper judgment as to the merits of the company; no liability attaches for non-disclosure, unless the non-disclosure is such as to put an entirely false complexion upon that which is disclosed.

Liability of Directors for Misstatements

In regard to matters which are disclosed in the prospectus, care must be taken to see that these are true in substance and in fact; the directors incur a serious liability for any misstatement, no matter how innocently it is made. A shareholder who applies for shares upon the faith of a prospectus which contains a misrepresentation may recover full compensation for the damages he has sustained thereby, which usually means that he can recover the full amount he paid on shares which have since become valueless To succeed in his claim he must prove that the statement in the prospectus of which he complains is in fact untrue, that he applied for the shares relying upon that statement, and that he has sustained damage. Except as against the company, it is no longer necessary to prove that the statement was made fraudulently. Liability to pay these damages falls upon any person who is a director of the company at the time the prospectus is issued, or is named in the prospectus as a director, any promoter and any person who authorized the issue of the prospectus. By promoter is meant a promoter who takes part in the issue of the prospectus, not including a person acting in a professional capacity on behalf of those engaged in promoting the company. An aggrieved shareholder is not obliged to sue every person who is legally liable, he need only sue one, who can claim contribution from all the others who were equally liable with him, unless perchance he was guilty of actual fraud whilst his colleagues were innocent.

A person has a good defence to such an action for damages if he can establish any of the following facts to the satisfaction of the Court —

(*a*) That he had reasonable grounds to believe, and did up to the time of allotment believe, the statement to be true If before allotment he becomes aware of the untruth of the statement, he can escape liability only by withdrawing his consent to the issue of the prospectus, giving reasonable public notice of his withdrawal and his reason for so doing.

(*b*) That the untrue statement was a fair representation of a statement of, or a correct and fair extract from the report or valuation of, an expert, by which is meant an engineer, valuer, accountant, or any other person whose profession gives authority to a statement made by him.

(*c*) That the untrue statement was in fact a statement of an official person, or was a correct or fair copy or extract of an official document.

(*d*) That, although originally consenting to be a director of the company, he withdrew his consent before the issue of the prospectus, which was issued without his authority or consent.

(*e*) That the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue he gave public notice to that effect. A person who is named in the prospectus as a director, but who has not given his consent thereto, or withdrawn his consent before the issue of the prospectus, is entitled to an indemnity from the directors and other persons who authorized the issue of the prospectus for any costs and expenses to which he may be liable or have incurred by reason of legal proceedings being taken against him.

Liability of the Company

The company itself is not liable to pay damages except for a fraudulent misrepresentation in the prospectus, that is to say, a misrepresentation which was made by the authorized agents of the company known to be untrue, or made recklessly without caring whether it was true or false.

But although a shareholder cannot receive from the company damages if the misrepresentation is in fact innocent, still he is entitled to claim to have his contract rescinded and his name taken off the register of shareholders, this is naturally a very important remedy when there is a liability upon the shares and the company is insolvent.

But to avail himself of this remedy he must make his claim immediately he discovers the untruth of the statement, for if he takes no action immediately he knows the true state of things the Court will hold that he has elected to retain his shares In any case it is too late after the company has gone into liquidation. He must not do any act which amounts to a ratification of the contract after he is aware of the untruth of the statement; for example, he must not pay the call that may be due upon the shares, for that would be very clear evidence of ratification. similarly, an attempt to sell the shares would be an election to retain the ownership of the shares. The company is not bound to contest an action for rescission of a contract to take shares If it is honestly satisfied that the shareholder was induced to take shares on the faith of a statement which turns out to be untrue, then the company is entitled to avoid the costs of litigation and remove the aggrieved person's name from the shareholders' register; but the company must act in good faith, otherwise the name can be restored at the instance of parties interested.

In an action for deceit or fraudulent misrepresentation the shareholder must establish (*a*) that the statement is untrue, (*b*) to the knowledge of the company; (*c*) that it was made with the object of inducing him to act upon it; and that he did so, (*d*) to his damage. It is, therefore, open to the company by way of defence to show that the statement was in fact true, or that it was made with an honest belief in its truth, so it is a good defence if it turns out that the shareholder did not rely upon the statement in the prospectus but upon his own investigations. But it is no defence to say that the shareholder, if he had cared to take the trouble, could have easily ascertained the facts for himself. The company is only liable to those persons to whom the prospectus is addressed. A public issue of a prospectus no doubt invites every member of the public to apply for shares on the faith of it, and is therefore addressed to every applicant for shares; but it is not addressed to a person who buys his shares on the open market or by private purchase, even though it be satisfactorily established that but for the prospectus the person would not have bought them

The prospectus is issued for the purpose of inducing the public to send in applications for shares. Usually with the prospectus there is sent out an application form upon which the applicant fills in the number of shares he desires the company to allot to him, signs the form, and sends it to the company together with the amount of application money fixed by the company. This in itself does not constitute a contract; it only amounts to an offer to take shares, and like all other offers it may be revoked at any time before it has been accepted by the company; but if the post has been the medium for effecting the contract, a revocation from the applicant would come too late, once the letter of allotment, which is the acceptance of the offer by the company, has been posted.

ALLOTMENT

Usually the prospectus mentions the minimum subscription upon which the directors will go to allotment. The information is of importance; a company necessarily requires a certain amount of funds to be subscribed for working capital, and it is courting disaster to go to allotment upon a subscription inadequate for that purpose; an applicant therefore wants to be assured that unless the company receives sufficient applications for shares, it will not go to allotment, and his money will be returned. Where any share capital is offered to the public for subscription, no allotment must be made unless (1) the minimum subscription (if any) fixed by the Memorandum or Articles and named in the prospectus is obtained; or (2) if no minimum subscription is so fixed and named, then unless the whole of the share capital offered is subscribed for. Not only must the subscriptions be obtained, but the money due upon application must be actually received. So strictly have the Courts enforced this rule that it was declared to be a breach of it in a case where the directors went to allotment before cheques had been paid in and cashed, although the cheques were perfectly good and were afterwards honoured. In arriving at the minimum subscription no account must be taken of shares to be allotted for a consideration other than for cash. The above requirement does not apply to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription. The amount payable on application on each share must not be less than five per cent of the nominal amount of the share.

If the subscription by the public is below the amount above mentioned the directors must not go to allotment, and the money must be returned to the applicants forthwith. If they delay for more than forty-eight days they make themselves jointly and severally liable to repay the money

with interest; before the forty-eight days have expired the liability to repay is upon the company, not the directors; nor is a director liable personally if he proves that the loss of the money was not due to any negligence or misconduct on his part. If the directors do go to allotment the allotment is perfectly good, subject to this: that a shareholder within one month from the statutory meeting — to be explained hereafter — may elect to avoid his contract, in which case the company must remove his name from the register. After the month the contract is binding, and he must retain his shares; there is no hardship in this, because at the statutory meeting he is informed of the total allotments; he is therefore informed that the directors have gone to allotment under the minimum subscription, and if such be the case, it is his own fault if he does not avoid the contract There is no necessity to commence legal proceedings within the month in order to take advantage of the privilege; it is quite sufficient to give such notice as will leave no reasonable doubt of the intention to rescind. Although an action for rescission on this ground will not lie after the month has expired if the notice has not been given, a shareholder is fully entitled to bring such an action upon other grounds.

Whether the shareholder elects or not to avoid his contract for shares, the directors who go to allotment under the minimum subscription specified above with knowledge of the facts are liable both to the company and the allottee for any loss, damages, or costs which they may have sustained thereby. The action may be brought within two years from the date of allotment.

Filing of Particulars of Allotment

Whenever a company makes an allotment of shares, whether it be the original or subsequent issue, very stringent provisions are imposed to the effect that particulars of the allotment shall be filed within a month with the registrar. Any default involves the heavy penalty of £50 a day upon every person knowingly a party thereto, although he can apply to the Court for relief on the ground that the omission was due to accident or inadvertence or other good cause. The particulars to be filed in the case of shares allotted for cash include the number of shares, the amount paid or due upon them, the names, addresses, and descriptions of the allottees; in the case of shares allotted for a consideration other than cash, (1) a return stating the number and nominal amount of shares so allotted, and the consideration for which they have been allotted; (2) the contract in writing duly stamped which constitutes the allottee's title to the shares; (3) together with any contract of sale, or contract for services rendered, or other considerations in respect of which that allotment was made. If these contracts are not in fact reduced to writing, particulars of them must be filed, the document containing such particulars being stamped with the stamp that the contract would have required if it had been reduced to writing.

MEETINGS

General Meetings

The company having been duly formed, and a body of shareholders having come into existence, the next step to be considered is the manner in which it manages its internal affairs. The constitution of the company, that is, its Memorandum and Articles of Association, determines usually the exact manner in which the will of the company is to be exercised, and in so far as that constitution is not contrary to the law of the land it is binding upon the company and the shareholders. The will of the company is determined by the meeting of the shareholders and the vote of the majority. The constitutions of companies vary in innumerable ways as to the manner of calling a meeting, as to the notice to be given, as to the requisite number to constitute the majority, as to the voting powers of the different classes of shareholders, as to the right to vote by proxy, and in various other points of procedure. In each case the constitution itself must be looked at, and those responsible for the calling of the meeting and the due conduct of the proceedings should be careful to avoid any irregularities.

Generally speaking, meetings may be divided under three heads: (1) The statutory general meeting; (2) the annual general meeting or ordinary general meeting; (3) the extraordinary general meeting. The word "general" implies merely that it is a general meeting of the shareholders, and may be conveniently omitted. To deal with these various classes of meetings in order:—

Statutory Meeting

The statutory meeting of the company is the meeting which the directors must call within a period not less than one month and not more

than three months after the company is entitled to commence business.

Certificate to Commence Business.—A company (other than a private company) may not commence business without a certificate to that effect from the registrar, which is not granted until the secretary or a director has filed with him on a prescribed form a statutory declaration that the minimum subscription has been secured, and that the directors themselves have paid, in respect of the shares they contracted to take, a sum of money not less than is due and paid upon shares allotted to the public. Where the company does not issue a prospectus inviting public subscriptions, the registrar will issue his certificate that the company is entitled to carry on business when there has been filed the statement in lieu of a prospectus. It is of the highest importance to ascertain that the company is entitled to carry on business, for every contract made with it before it is so entitled is provisional only, and is not binding until that date. Moreover the company cannot exercise its borrowing powers till that date Any person responsible for the company commencing business, or exercising its borrowing powers before it is entitled, is liable to a daily penalty not exceeding £50.

The statutory meeting must therefore be held at the very outset of the commercial life of the company; if it is not called, an application may be made to the Court compulsorily to wind up the company. Notice of special business may be given, but there is to be complete freedom of discussion upon all matters concerning the company, and the meeting may be adjourned from time to time. The great importance of the meeting is that the shareholders do not go there without being supplied with adequate material for discussion; for the directors (except in the case of a private company) must, seven clear days before the meeting is held, send to each member a report, called a statutory report, to be filed with the registrar, certified by two directors, or, if there are not two directors, then the sole director. This report contains details of the shares allotted and for what consideration, the actual cash received, the receipts on account of capital, whether from shares or debentures, and the payments thereout up to seven days prior to the report, details of the balance in hand, together with an account of the preliminary expenses. The figures are to be certified by the auditors, if any. The report further includes details of any modification of a contract referred to in the prospectus, for it is now impossible to vary such a contract prior to the statutory meeting as it requires the approval of the statutory meeting. The statutory meeting has ensured, so far as legislation can ensure, that the shareholders shall have every opportunity of ascertaining that the company is starting its career, at least in respect of its capital account, in accordance with the promises held out in the prospectus.

Ordinary and Extraordinary Meetings

The annual meeting of the company is usually known as the ordinary meeting, whilst any other meeting is called an extraordinary meeting. Usually one meeting a year is sufficient, but if by chance anything arises during the year upon which the directors desire to consult the shareholders, they summon a meeting, which quite naturally is called an extraordinary meeting.

A company must hold a general meeting once at least every calendar year, and not more than fifteen months subsequent to the holding of the previous one. Every director, secretary, or other officer of the company knowingly a party to the default is liable to a penalty of £50 When default has been made, the Court may, upon the application of any member, direct that a meeting be held. At this meeting the usual business that transpires is to sanction a dividend, if the company is in a position to pay one; the consideration of the accounts, balance sheet and ordinary report of the directors and auditors; the election of directors and other officers in the place of those retiring by rotation; and to fix the remuneration of the auditors. The Articles usually define this business as ordinary business, whilst all other business, whether dealt with at an ordinary or extraordinary meeting, is defined as "special" business.

It is the directors' duty to convene the meeting, whether an ordinary or extraordinary meeting. This must be done by a resolution of the Board of Directors duly constituted. Usually the Articles of Association provide for the meetings to be convened upon the requisition of a certain number of shareholders, the meeting being convened at their dictation by the directors, or in default thereof by the requisitionists themselves. As has been stated above, the Act itself makes provision for the calling of the annual meeting; the Act further provides for the convening of an extraordinary meeting, notwithstanding anything in the Articles to the contrary, but every precaution has been taken to prevent matters being rushed. The directors are to call the meeting upon the requisition of holders of not less than one-tenth of the issued share capital upon which all calls that are due have been paid. If the meeting is not called within twenty-one days of the request,

the majority in value of the requisitionists may call it, but in that case the meeting must not be held before three months from the date of the original request. Whether the directors or the requisitionists call the meeting, if the resolution to be passed is such as requires to be confirmed at a subsequent meeting, then the directors must forthwith call such meeting, or, if in default for a period of seven days, the majority in value of the requisitionists may convene it.

The statute further provides that in default of, and subject to, any regulations to the contrary, any five members may call a meeting.

Notice of Meeting

The regulations usually provide that at least seven days' notice be given of a meeting, and if any special business is to be transacted, the general nature of that business must be set out. It is not essential to set out the exact resolution to be submitted, so long as the general nature of the resolution is clearly indicated. The directors must act in good faith and not with the intention of so framing the words of the notice as to mislead the shareholders into the belief that nothing really important is to be transacted. For example, if it is intended to alter certain regulations so as to increase the remuneration of the directors, it would not be acting with good faith to give notice that new regulations would be submitted to the meeting, and that the regulations as proposed could be seen any day before the meeting at the office of the company.

The notice must be served upon all shareholders on the register who are entitled to receive notice, and if not so served the meeting is invalid, but to avoid such a catastrophe, the regulations ought to provide that non-receipt of such notice shall not invalidate the meeting, and that notices, for whatever purpose, shall be deemed to be properly served by addressing, prepaying, and posting a letter containing the notice to the registered address of the member.

The meeting having been summoned, it is usually provided by the regulations that a quorum of members must be present in order that the business may be transacted; three is a common minimum. In the absence of any regulation, two members can form a quorum, but not one member, for he cannot constitute a meeting. Except where such a possibility was contemplated by the framers of the Articles of Association, as where one person was the sole owner of a class of shares [*East v Bennett Bros. Ltd.* (1910)].

Adjournment of Meeting

The Articles should provide for power to adjourn meetings from time to time, for the business may be too heavy to be transacted at one meeting, or the shareholders may require further enquiries made or further facts submitted before they pass the resolutions put before them. The power of adjourning the meeting is, by the regulations, usually in the chairman, with the consent of the meeting. The chairman cannot be compelled to adjourn against his discretion, so long as he acts in good faith.

Chairman of Meeting

Unless the regulations provide anything to the contrary, any member may be elected to be chairman of the meeting by the members present; it is, however, almost invariably provided that the chairman of the board of directors shall act as chairman of meetings. His main duty is to keep order, to see that the business is proceeded with, and that discussion is kept within bounds; within reason he can put the closure upon debate.

Resolutions

The will of the meeting is indicated by voting and passing resolutions submitted to it. Resolutions are of three kinds: (1) ordinary resolutions; (2) extraordinary resolutions; (3) special resolutions The distinction between them lies in the deliberateness with which they must be respectively passed; in matters of mere routine, such as the election of directors, a resolution of a mere majority present suffices. In graver matters a mere majority ought not to determine the day; while in other matters it has been deemed prudent that resolutions should only have effect after two meetings consecutively held have passed them.

An *ordinary resolution* is a resolution carried by the majority of members present entitled to vote (or their proxies if allowed by the regulations).

An *extraordinary resolution* must be carried by a majority of not less than three-fourths of those present (or their proxies). Notice must be given to the members of the intention to propose such resolution. To instance a case where an extraordinary resolution is necessary: a company can be wound up voluntarily if it resolves by extraordinary resolution that it cannot by reason of its liabilities continue its business, and that it is advisable to wind up. So those responsible for the constitution of the company may provide in the regulations that such business as is considered

of sufficient importance shall only be determined at meetings by extraordinary resolutions.

A *special resolution* is a resolution which is first passed as an extraordinary resolution, and then confirmed by a majority of voters present (or their proxies) at a subsequent meeting of which notice has been given, which must be held not less than fourteen days and not more than a month after the first meeting. Hence a special resolution cannot be rushed. Such important matters as the increase or reduction of capital, the alteration of the objects of the company, the voluntary winding up of the company (except in the case where it is unable to meet its liabilities) can only be effected by special resolution. Notice of the two meetings can be given on one notice form if properly worded.

Voting

The voting power of each member is a matter for the regulations of the company; usually it is one vote for each share, and if nothing is said to the contrary such is the voting power. But at meetings, unless a poll is demanded, the voting is by show of hands of those present, when each man has one vote, and unless the contrary is provided, proxies do not count. It is the chairman's duty to count the hands, and his declaration that the resolution is passed is conclusive It is usual to give him, by the regulations, a casting vote in case the votes for and against the resolution before the meeting are equal. If the shareholder is a limited company the vote may be exercised by a person duly authorized by the company.

Obviously a vote taken in this manner by a show of hands may not at all represent the real wishes of the body of the shareholders or of those who have the greatest stake in the company, for the voting is on the basis of one man one vote. Hence the Act provides that upon the demand of three members (it may be five, under the regulations) at any meeting at which an extraordinary resolution is to be submitted to be passed or a special resolution to be passed or confirmed, a poll must be taken. The poll must be taken on the basis of the number of votes each member has, usually a vote for each share. Furthermore, votes by proxy can be taken into account if the regulations so permit, as they almost invariably do. A proxy is a power of attorney given to some other person to vote on behalf of the shareholder giving it. It is usually required to be handed in at the company's office a certain number of hours prior to the meeting. A common stipulation is that only a person present at the meeting and entitled to vote may use a proxy; this ensures that no strangers shall be present to interfere with the internal concerns of the company. The use of proxies very often makes the carriage of resolutions a foregone conclusion, as the directors have sufficient proxies given them to support their policy and to defeat any opposition if a poll be taken, if, therefore, a show of hands should go against them, they effect their purpose by demanding a poll. A poll should be taken by voting "for" or "against" the resolution on paper, and scrutineers may be appointed by the meeting. But a poll need not be taken at the meeting itself. A day and time may be fixed for holding the poll, in which case even those who were not present may record their vote. If the regulations provide that the poll shall be taken as and when the chairman may direct, he may direct that it be taken at the meeting itself.

Minutes of Meetings

Proper minutes of the proceedings at general meetings and meetings of directors and managers must be keep in a book. When signed by the chairman of the meeting or the chairman of the next succeeding meeting they are evidence of the proceedings. This duty of keeping proper minutes, especially of the proceedings at Board meetings, is one constantly neglected by small companies; yet it is of the utmost importance as soon as litigation arises. The minute book should be most carefully kept. It is true the evidence is only *prima facie*, but inferences must inevitably be drawn from the omission of any alleged material deliberation from the minute book.

When an extraordinary or special resolution has been passed, it must be printed and forwarded to the registrar within fifteen days. This is obviously a necessary requirement, because the resolution in some way or other will alter the Memorandum or Articles of the company as originally filed. If the Articles have been registered, a copy of every special resolution in force must be embodied in every copy of the Articles subsequently issued. If no Articles have been registered, a copy of the resolution must be forwarded to any member upon request, for which the company must not charge more than one shilling. Any default in the above requirements makes the company, and every director or manager who wilfully permits it, liable to a penalty.

ACCOUNTS

At the annual general meeting the important business to be transacted usually consists in the sanctioning of a dividend, if any, and the consideration of the directors' report, the accounts, and the balance sheet. These matters, considered from the point of view of accountancy, will be discussed elsewhere (see Part VII), but there are certain legal and business considerations which may well be discussed here.

It is the duty of directors to keep proper accounts; they are agents of the company, and, like other agents, if they fail to do so, may be compelled by the Court to account and to pay the costs of the litigation. They are liable to imprisonment if the accounts are fraudulently kept. The Articles of Association usually provide that the directors should cause true accounts to be kept of moneys received and expended, and of the assets and liabilities of the company, and that the books of the company be kept at the registered office of the company.

The shareholder has by law every opportunity of knowing the true state of the accounts, although it is remarkable how little interest most shareholders take in these financial matters. Usually the Articles do not allow inspection of the trading books of the company. Obviously that would never do, as trade rivals might become shareholders for the express purpose of ascertaining the trade secrets of the company. A common provision is to the effect that the directors of the company in general meeting may determine when and where and to what extent the books may be open to inspection by shareholders; but the Articles cannot take away the right to inspect those books which the statute says the shareholders may inspect, viz. the register of members and the register of mortgages. A right to inspect carries with it by implication a right to make extracts; the right ceases upon the voluntary winding up of the company.

The Act provides for an inspection of the company's affairs by an inspector of the Board of Trade, upon application of members holding not less than one-tenth of the shares issued. The inspector may examine witnesses on oath and in due course he reports to the Board of Trade. The applicants must show good cause why the investigation ought to be made, and the application should not be rashly made, as the Board of Trade may demand security for the costs of the enquiry, and at the conclusion the applicants may have to defray the expense and costs. The company itself has the same power by special resolution to appoint inspectors. The inspectors so appointed have the same powers as the Board of Trade inspectors, but they report as the company in meeting directs. The Act does not expressly enact that the directors should place a profit-and-loss account and balance sheet before the shareholders at least once a year, although the shareholders can virtually force the directors to do this by their power to call an annual meeting, to which reference has already been made. The Articles, however, should make full provisions for the accounts to be rendered annually; it is not usual to provide for them to be submitted more than once a year. A report of the directors accompanies the balance sheet and profit-and-loss account, consisting of a brief résumé of the company's position and affairs during the past financial year.

Auditors

The auditors of the company protect the interests of the company and its shareholders in matters of accounts. As the law now stands it can only be due to the gross negligence of the shareholders of a company if the accounts are not properly audited, by auditors who must report to the company. At any time before the statutory meeting the directors may appoint auditors, who act until the first annual meeting unless removed by resolution of the shareholders in general meeting. The directors can also fill up any vacancy that may occur during the year. With the exception of these two appointments, of a temporary nature, it is the shareholders in general meeting who appoint the auditors. This must be part of the business of each annual general meeting, the auditors holding office until the succeeding annual meeting only; an auditor, other than a retiring auditor, must be nominated for election fourteen days before the meeting, not less than seven days' notice being given to the shareholders by advertisement or otherwise as provided by the Articles; a director or officer of the company cannot be appointed. If auditors are not appointed at the annual meeting, any member of the company may apply to the Board of Trade to make the appointment. The remuneration of the auditors is fixed by the shareholders, the directors of the company, or the Board of Trade, according to which body appoints the auditors.

In order to carry out their duties adequately the auditors have a right of access at all times to the books and accounts and vouchers of the company, and may require from the directors or other

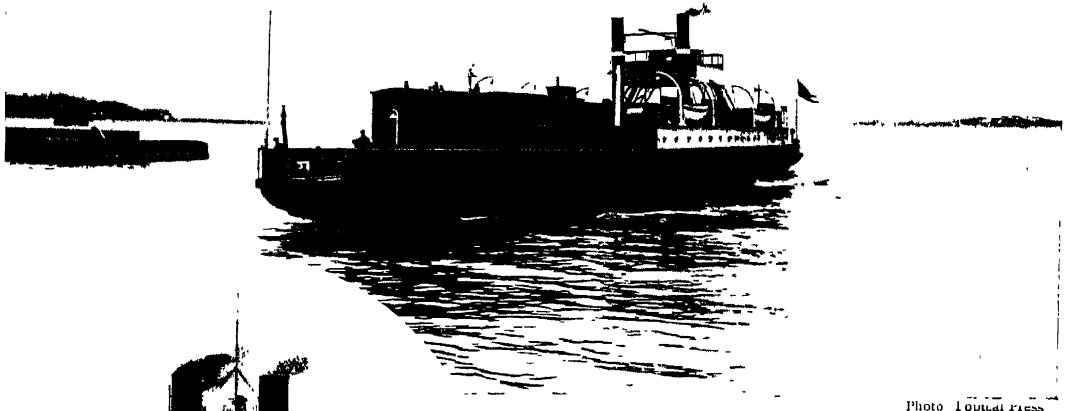
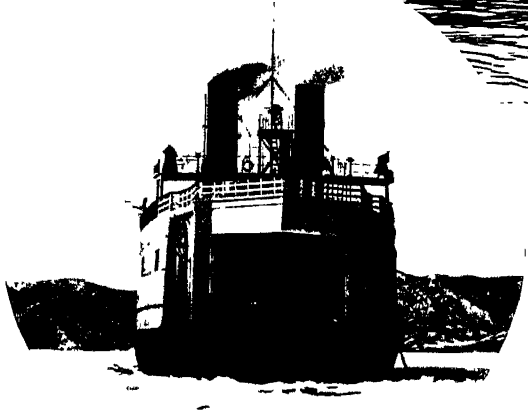


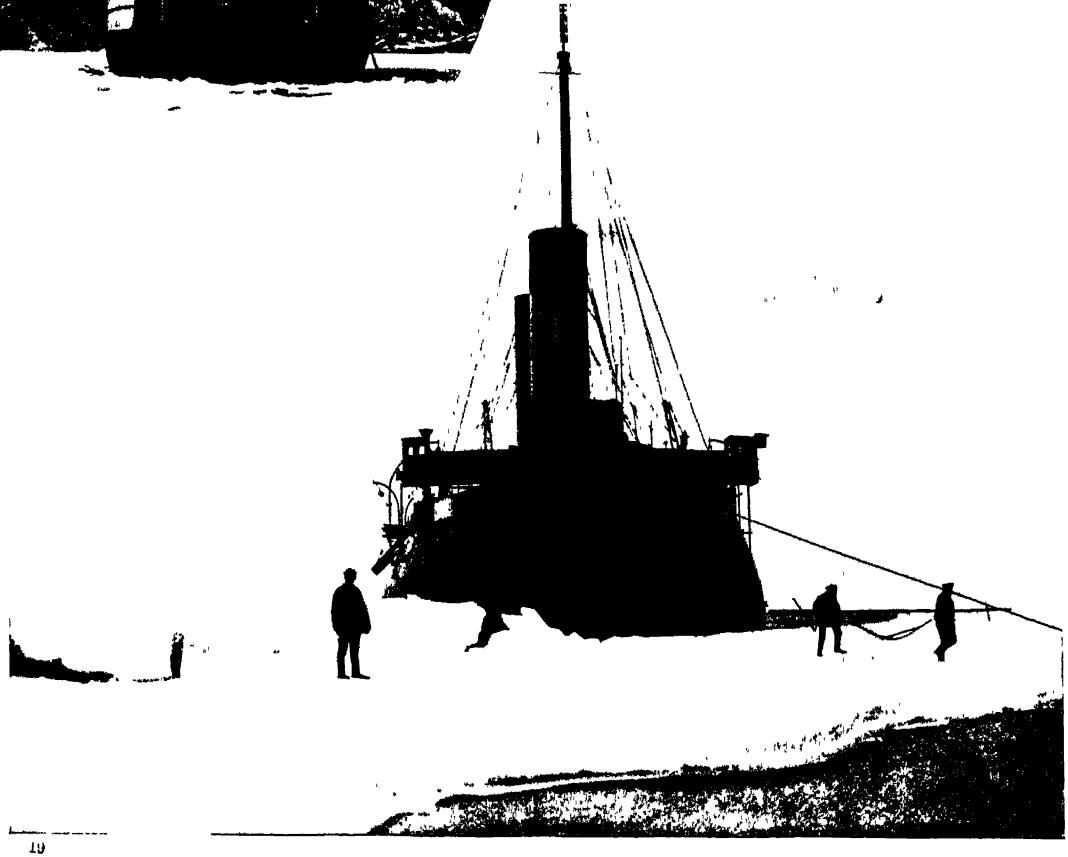
Photo Topical Press

TRAIN FERRY AT FREDERICIA, DENMARK

ICE-BREAKING TRAIN FERRY, LAKE BAIKAL (in inset)

(Sir W G Armstrong, Whitworth & Co., Ltd)





ICE-BREAKER "ERMACK"

(Sir W. G Armstrong, Whitworth & Co , Ltd)

officials of the company such information and explanation as may be necessary in order to put before the shareholders a true statement of the company's financial position. Like other skilled persons, the auditors are only liable to an action if they do not use the ordinary skill of their profession. They are not liable if in fact they do not put true accounts before the shareholders, provided that error is not due to carelessness on their part; they are entitled to believe that the persons supplying them with information are honest persons, and in the absence of any circumstances arousing suspicion in a reasonable man, they may accept such information as genuine. So they may accept the valuation of stock in hand by the manager of the company, who, if he is honest, has no interest in giving a false valuation; but, of course, he must be a capable person. On the other hand, the directors or other officials of the company, so long as they act honestly, are not bound to test the accuracy of the auditors' work. If there is any reason at all for suspicion, the auditors are not bound to keep to the books of the company; they may travel outside the books and seek such material as will confirm or dispel their suspicion; and if by chance any particular duties are laid upon them by the Articles of Association, they must not neglect such duties, and will be deemed to have knowledge of them, with the result that if any damage arises to the company by reason of any neglect in that respect, the company will have a good cause of action against the auditors.

Auditors' Report

The auditors having examined the accounts, must make a report to the shareholders thereon and frame a balance sheet based on such accounts. The report must state: (*a*) Whether or not they have obtained all the information and explanations they have required. If they say they have not, it will lie with the shareholders to say whether or not the directors shall give such information. It sometimes happens that the directors, for reasons upheld subsequently by the shareholders, refuse to give certain information to the auditors. (*b*) Whether, in their opinion, the balance sheet referred to in the report is properly drawn up so as to exhibit a true and correct view of the state of the company's affairs according to the best of their information and the explanations given to them, and as shown by the books of the company.

The balance sheet must be signed on behalf of the Board by two directors, or one if there be only one, and the report of the auditors must be attached thereto, or a reference made to the report be inserted at the foot. The report must be read to the company in meeting and open to inspection; any shareholder, upon payment, is entitled to be supplied with a copy of the report.

The issue of an unsigned balance sheet, or one without the report or reference attached, involves the liability to a fine not exceeding £50 upon all the officials of the company who are knowingly parties to the default. Whatever may be the rights given by the Articles to preference shareholders and debenture holders to attend the ordinary meetings, they have the right by statute to receive and inspect the balance sheet, auditors' report, and other reports issued to the ordinary shareholders

The Dividend

The declaration of a dividend is part of the general business of the ordinary meeting. The Act does not in words give power to divide up profits, probably because it is obviously an inherent object of a trading company to do so. The Articles should provide who is to declare the dividend and at what periods of the year. The power may be given to the directors, but usually it is given to the company in meeting upon the recommendation of the directors as to amount The accounts are commonly made up once a year, when it can be accurately estimated what dividend ought to be paid; but there is nothing to prevent the accounts being completely made up each half year, as is indeed done in the case of most companies constituted by private Act of Parliament. Where the accounts are only completed once a year, it is commonly provided that the directors shall have power to declare an interim dividend if the state of trade warrants it. Once the dividend is declared, a debt arises for which the shareholders can sue the company. The Articles should provide for the proportion in which the dividend should be paid to the shareholders. The preference shareholders commonly receive a fixed rate. Shareholders *prima facie* are entitled to be paid in accordance with the nominal value of their shares, irrespective of the amount paid upon them. This does not seem very equitable, and the Articles should provide that the dividend should be paid in proportion to the paid-up capital of the shares. It must, however, be remembered that shares with a liability upon them, that is shares not fully paid-up, in very many cases are a great source of strength to the company, for they constitute a security upon which the company can obtain enlarged credit; inasmuch as for this reason holders of partly paid-up shares are not permitted to make their shares fully paid-up, however much they may wish to do so, it is

considered by many unfair that they should derive no compensatory advantage for the benefit they confer upon the company. There is, hence, a third alternative sometimes adopted by the Articles, viz. that interest shall first be paid on the amount actually paid up on all shares, and then a dividend paid in accordance with the number of shares respectively held, irrespective of the amount paid up.

Dividends can only be paid out of profits. To pay dividends out of capital is beyond the powers of a company, and no power can be given by the Articles or by the company in meeting to make such a payment, for it really amounts to a reduction of capital, which, as will be shown later, can only be effected by leave of the Court. There is, however, an exception provided for by the Act. It not infrequently happens that large sums have to be raised for the construction of works and buildings, such as railways, or for the provision of plant which cannot become profit earning for a lengthened period; that is to say, there is no means whatever of earning any profit for some considerable time on the large capital involved. In such case, it is possible to pay interest on the capital or charge the same to capital; not of course as dividends out of profits, but as part and parcel of the cost of construction or provision of plant. But even then such payments can only be made under the most stringent provisions; they cannot exceed four per cent per annum, they cannot be made without the sanction of the Board of Trade, nor unless authorized by the Articles or by special resolution; they can only be made for a period not to exceed at the outside six months from the end of the half year in which the construction is completed or plant provided.

Although it is clear that dividends can only be paid out of profits, it is by no means clear what are to be deemed profits, and the question has been frequently the subject-matter of litigation. It is, of course, a serious question for the directors, for if they pay dividends not out of profits, they may be sued by the company to replace the sum distributed; not, however, if the shareholders have received the dividend with notice or full knowledge of the facts. It is the practice in sound companies to reckon their profits much on the same lines as a business man, by taking into account wasting or depreciated property. But as a matter of law this is not by any means a necessity. A balance sheet in this respect is not a clear indication of the true position of the company. It is true that all accumulating capital or floating capital, as distinguished from fixed capital, must be kept up; that is to say, if the capital of the company is expended in goods which are sold in due course, the original cost of the goods must be taken into account before the profits are arrived at. But the same is not true of fixed capital, in this case the excess of current receipts over current payments may be divided although the assets year by year become gradually worthless; a certain plant may after ten years be valueless by reason of deterioration, yet the profits may be arrived at irrespective of this fact altogether. So with a lease of a coalfield, say, for ten years; the coal is extracted and sold, with the result perhaps that at the end of five years the lease is valueless; it is quite lawful to divide up the total receipts for the sale of the coal after allowing for expenses, although it is really nothing less than dividing up the capital paid for the purchase price of the lease.

The Reserve Fund

The company is not bound to divide up all its profits. It may provide a reserve fund to meet future emergencies or to equalize dividends, that is to say, in order to make grants from the reserve fund in bad years so as to bring the dividend for these years up to the level of the dividends paid in normal years. The Articles should provide as to how the reserve fund should be invested. Power is usually given to the directors to invest the reserve fund at their discretion, either in the business, or in such investments, shares or otherwise, as they may think fit. But they must not invest in the shares of the company itself, for that is never permissible, being tantamount to a reduction of capital. There is no obligation to write down the value of the securities in which the reserve fund is invested to their actual market value at the time the balance sheet is issued; hence it is sometimes desirable for a shareholder to enquire what is the present-day value of the securities.

It is a very common practice, the prudence of which is extremely doubtful, for directors to invest the reserve fund in the business itself. The argument in favour of such a course is twofold. In the first place, it is said that as the business is doing well enough to permit of a portion of the profits being set aside after payment of a reasonable dividend, it will earn a greater rate of interest upon the reserve fund invested in it than could be obtained by investing in the usual market securities, upon which only three or four per cent can be obtained with any degree of safety. In the second place it is said that, assuming the business wants more capital in it, it is better to use the reserve fund than to invest the reserve fund at say four per cent per annum, and

borrow on mortgage or otherwise, say at four-and-a-half to five per cent, or issue further share capital upon which a much higher rate of interest may have to be paid in the shape of dividends. The argument against such an investment of the reserve fund is that it really destroys the main object for which the fund exists, viz. to help the company in times of stress or to equalize dividends in bad years. So long as the company is prosperous the reserve fund is not required, and it is immaterial in what form it is; but when the bad year comes or an emergency arises, of what use, it is argued, is the fund invested in the business?

SHARES

The Share Register

To be a member of a company a person must have agreed to become one, and his name entered on its register of members. The register of members is an essential to every company, and a penalty lies upon directors and officials of the company who are knowingly in default when the register is not kept in accordance with the requirements of the statute. The register must contain the names, addresses, and occupations of the members, the description of shares held by them (for every share must be distinguished by its appropriate number), and the amount actually paid up in cash, or agreed to be considered as paid up for some consideration other than cash, on the shares. The register must further contain the date at which each person was entered in the register as a member, and the date at which he ceased to be a member.

The register, then, is a record of present and past members, and it is *prima facie* evidence of the matters inserted in it. Hence a person whose name is inserted therein is a member with all the rights and liabilities of a member.

The register is accessible to the public. Any person can by payment of the sum of one shilling at the utmost inspect it, and members may inspect it gratis; any person may demand a copy upon payment of sixpence per hundred words. This publicity is very necessary, as it places persons intending to deal with the company in much the same position as if they were dealing with a partnership firm. It is true that members are only liable for the amount unpaid on their shares, but a person inspecting the register can at least ascertain if the members are persons who can meet the liability outstanding on their shares, if any, in case of need. If all the shares are fully paid that fact will tell its own story. Again, a person before becoming a member, where there is a liability upon the shares, may well be curious to ascertain who his co-members are.

The register must be kept at the registered office of the company. Fresh entries may constantly be made by reason of members transferring their shares to new members, but for thirty days in the year the company, upon giving notice by advertisement in a local newspaper may close the register, and during that period no entries will be made and no inspection permitted. A company almost invariably uses this licence at the time that its books are being made up for the purposes of audit and declaration of a dividend if warranted. When the register is closed for the purpose of declaring a dividend, the dividend is paid to those members who are actually on the register at the time of closing. This, of course, does not determine who ultimately is entitled to any dividend that may be declared subsequent to the date of purchase, even though the dividend be in respect of a period anterior to the date of purchase; if the purchaser is not put upon the register in time to permit of the dividend being paid direct to him, then the vendor who receives it from the company must pay it over to him. In the case of shares bought in accordance with the rules and regulations of the London Stock Exchange (and provincial stock exchanges), a date is fixed by the committee, upon which all dealings in a share upon which a dividend has been declared are ex dividend, that is to say, a purchase on and after that date does not carry with it the dividend

The subscribers to the memorandum of a company are deemed to have agreed to become members of the company, and on its registration must be entered as members in its register of members.

Shares or other interest of any member in a company are personal estate, even though the only assets of the company consist of real estate.

Transfer of Shares

It is left to the Articles of Association to determine how shares shall be transferable. The Articles usually provide for a simple form of transfer, to be executed by both the transferor and transferee. The following is the form adopted by most companies:—

I, A B, of ..... in consideration of the sum of £ ..... paid to me by C D of .....

(hereinafter called the said transferee), do hereby transfer to the said transferee the shares numbered ..... in the undertaking called the .... Company, Ltd., to hold unto the said transferee, his executors, administrators, and assigns, subject to the several conditions on which I hold the same at the time of the execution thereof: and I, the said transferee, do hereby agree to take the said shares subject to the conditions aforesaid.

As witness our hands, the .. .. day of ....
Witness to the signatures of .....

The transfer is stamped with an *ad valorem* stamp, and usually the company charges a registration fee of 2*s.* 6*d*, or 2*s.* 6*d.* per hundred shares. The certificate under the common seal of the company, which is *prima facie* evidence of title of the member to his shares, is left with the transfer of the shares at the company's offices, and in due course a new certificate is issued to the purchaser. When the vendor has a certificate for a larger number of shares than he actually sells, it is the usual practice for him to lodge the certificate at the company's offices, and the company then certifies on the transfer form that such certificate has in fact been lodged at the office. The vendor is thus enabled to deliver to the purchaser the "certified" transfer without the certificate, which by the rules of most stock exchanges is a good delivery, and the purchaser may at his leisure present the certified transfer for registration upon payment of the prescribed fee. The company in due course issues a new certificate to the purchaser and a new certificate to the vendor for the balance of the shares not transferred. When the vendor only sells part of the shares represented by the certificate, and lodges the certificate as aforesaid, the company, pending the delivery of a new certificate for the balance, gives him a receipt for the balance. This receipt is with most companies regarded in the same light as a certificate, so that the holder can proceed to sell and transfer his shares by delivery of the receipt with the executed transfer. The same practice obtains when a transfer and certificate are left for registration by the purchaser. If the member by chance loses his certificate, the company will usually issue to him a certificate in its place upon his giving a satisfactory indemnity to the company.

A discretion should be allowed to directors to refuse to register transfers of shares which are not fully paid when they are not satisfied that the transferee is a person of whom they can approve. This is a very necessary power, and provided the directors act in good faith the Court will not interfere with the exercise of it. The liability outstanding on shares is an important asset upon which the company can rely, and upon which creditors can rely, and it is necessary in proper cases to prevent persons who are able to meet the calls on their shares from escaping liability by transferring the shares to a man of straw. This device, in order to escape liability, is resorted to when a company is in low water, and it is perfectly legal. If the company goes into liquidation within the year from the date of the registration of the transfer, the device fails of its intended effect, but once the year is past the transferor escapes all liability. The transfer must be an out-and-out one; if the transferee is only a trustee for the transferor, so that he must retransfer them upon request, the Court will, in the event of liquidation, order the name of the member to be restored to the register in order to make him liable for the calls on his shares. Again, if a member induces the company by fraud to register the transferee, a man of straw, in his place, the Court will hold the transfer of no effect.

The directors cannot register a forged transfer. If shares are transferred by means of a forged transfer, and the name of the owner removed accordingly from the register, the company must restore it, and the person's name registered by reason of forgery must be removed. If, before the forgery is discovered, the company issues to the new member a certificate in pursuance of the transfer, the company will not be permitted in a Court of Law to deny the title of such new member as against a third person who buys the shares from such new member on the faith of the certificate issued by the company. The company, of course, cannot register the said party in respect of those very shares. It must issue other shares to him, if possible, or pay the damages he has suffered. The company would be entitled to an indemnity from the person who was registered on the faith of the forged transfer presented for registration. The person who actually committed the forgery would be ultimately liable, both civilly and criminally, if he had not made good his escape; but the person who usually has to bear the loss is the person who bought on the strength of the forged transfer.

Articles of Association may restrict in various ways the free right of transfer, e.g. it may be necessary for a member to offer his shares in the first place to existing members before attempting to dispose of them to strangers. This is commonly the case in small companies, and the matter is discussed more fully in dealing with Private Companies.

The personal representative of a deceased member is entitled to transfer the shares. Generally

the Articles provide that the personal representatives and the trustee in bankruptcy may be registered in lieu of the deceased or bankrupt member respectively.

The register of members can contain no record of any trust. The only person to whom the company can look is the person whose name is on the register. In the case of the bankruptcy of a member, the trustee has the right to transfer the bankrupt's shares. Indeed, if there is a liability on the shares which it is not worth while for the trustee to incur, he may within three months of his appointment disclaim the shares, in such circumstances the only remedy of the company is to prove in the bankruptcy for the injury which they suffer. (See Chap. XI of this Part.)

A creditor who obtains a judgment against a member of a company can obtain from the Court a charging order upon the member's shares in the company, whereupon the member cannot transfer and the company cannot register a transfer of the shares until the same be discharged. An order can also be made, charging the shares held in trust for the debtor. The charging order can be enforced only by bringing an action to sell the shares thus charged; such proceedings cannot be taken till after six months from the date of the charging order.

Any person aggrieved by the fact that his name is without sufficient cause entered in or omitted from the register of members, or that there is default or unnecessary delay in entering in the register the fact that he has ceased to be a member, may apply by motion to the Court to rectify the register. This is a simple and inexpensive method; where there are complicated questions of fact to be tried the procedure is inapplicable, and an action should be brought in the ordinary way.

It will be gathered from the above that the list of members entered in the register may be, and in active public companies generally is, constantly changing. The Act demands, with penalties for default, that a list of members be made on the fourteenth day after the first or only ordinary meeting in the year. The list must also include the names of persons who have ceased to be members since the last return. The dates of registration of transfers during the period must be given. Then an important summary must be made containing the following particulars: amount of share capital; number of shares, unissued and issued for cash or otherwise; amount paid up; amount of calls paid; amount of calls unpaid; amount of commission paid since the last return in respect of shares and debentures, or by way of discount in respect of debentures; number of shares forfeited; amount of outstanding share warrants, list of directors; amount of debt due from the company in respect of mortgages and charges required to be registered; a species of audited balance sheet, but not including necessarily a statement of profit and loss, showing assets and liabilities.

This detailed list and summary must be entered in the register of members itself, and a copy must be sent forthwith to the registrar of companies. It will be seen that by examining the public file a person can acquire considerable information as regards the position of a company, at a charge of one shilling.

A company whose objects comprise the transaction of business in a colony may keep a colonial register of members. A duplicate register must be kept in this country, up to date as regards alterations. Shares entered on the colonial register must be distinguished from shares with which the home register is concerned, and transactions in such shares must be entered only in the colonial register so long as it exists.

Share Warrants

The usual method of transferring shares is by transfer signed by the parties as already described. A company has power, however, if its Articles of Association so provide, to issue, in lieu of a certificate, share warrants. The advantage of share warrants is that they are transferred by delivery the same as bank notes, and so the cumbrous process of executing a transfer, registering it, obtaining a new certificate, &c., is avoided. On the other hand, share warrants (at least of all companies whose shares are dealt in on the stock exchange markets) are similar to negotiable instruments, a person who gives value for them without notice of fraud is entitled to them. Hence care must be taken to see that they are not lost or stolen. The same consideration does not apply at all to an ordinary certificate, which can cause little damage by going astray, unless the person into whose hands it comes is prepared to forge a transfer.

An objection to share warrants is that the stamp duty is heavier than the ordinary transfer stamp, but it must be remembered that the duty is paid once and for all, no matter how often the warrant is transferred.

Coupons are usually attached to the warrant, which are presented at the company's office for payment when the dividend is advertised to be so paid.

Where it is the intention of the company to permit of share warrants being issued the Articles of Association should set out the conditions under which such warrants will be issued, and the posi-

tion of the persons who hold them. The discretion to issue them is given to the directors, and they are only issued in respect to fully paid-up shares. Apart from the Articles the holder is not a member of the company as is a registered holder. Upon the issue of a share warrant, the company must strike out the name of the member from its share register, precisely the same as if he had ceased to be a member, and must enter in the register the following particulars. (1) The fact of the issue of the warrant. (2) A statement of the shares included in the warrant, distinguishing each share by its number. (3) The date of the issue of the warrant. The Articles, however, may and do provide that the holder of the share warrant, upon depositing his warrant at the office, may, during the time of such deposit, attend and vote and exercise the privileges of a member at any meeting. If a holder loses his share warrant, the company should have power to issue a warrant in its place upon being properly secured. At any time a holder may surrender his share warrant, and have his name entered on the company's register as a member. It must be noted that under no circumstances can share warrants be used as an equivalent for the qualification shares of a director or manager of a company. The reason for this restriction is obvious.

The forgery, personation, unlawfully engraving plates, &c., of share warrants are most serious criminal offences.

Share Certificate

A company must have ready for delivery certificates for shares within two months after allotment, or after the registration of a transfer of shares, as the case may be.

Calls

The power of making calls upon shares not fully paid up is usually left in the hands of the directors, sometimes with restrictions; as, for example, that they be not permitted to call up at one time more than one-fourth of the nominal amount unpaid on the shares, and that the calls should not be made at more frequent intervals than one month. It is also usual to provide that the shareholders should have fourteen days' notice of a call. The directors must use their powers in this respect as in other respects *bona fide*, and so long as they so act the Court will not interfere with their discretion. It is most essential that the calls should be made regularly, otherwise a debt will not be created; the meeting of directors must be properly convened, the amount of the call, the time when, the place where, the person to whom it is to be paid, must be accurately notified to the shareholder. If the call is then not paid there is a debt due to the company, and the directors may, and it is their duty to, sue the shareholder in default for the amount of the call. Any failure to act with reasonable promptitude under all the circumstances of the particular case would constitute a breach of duty on the part of the directors, and they would be liable at the suit of the company for any loss that the company had sustained. It is possible to obtain a speedy judgment upon an action for calls, for it is seldom that a shareholder can have any defence.

The Articles may, and usually do, provide that the directors may charge interest upon calls due from the date on which they remain unpaid, the directors being given a discretion to waive such right. Interest is not usually insisted upon by directors unless they are compelled to take proceedings for payment.

It is not at all necessary that all shares should have the same amount paid up upon them. Where shares are not equally paid up, the question of the payment of dividends arises, which has already been discussed above. It is not unusual to give directors power to accept an advance from shareholders in respect of the amounts uncalled and unpaid upon their shares, upon the condition that interest at a fixed rate in lieu of a dividend should be paid upon such moneys advanced until such time as a call shall be made on all shares alike. This power again must be used only with perfect good faith. The money so advanced is almost in the nature of a loan, with the result that the directors may pay the interest out of capital where the profits for the year do not permit of the interest being paid from that source; again, should the company go into liquidation, the money so advanced would have a claim upon the assets of the company prior to the claim of capital called up in the ordinary way.

Lien upon Shares

It is almost a universal practice to provide in the Articles of Association that the company shall have such a lien, which shall extend to any dividends that may be due to the shareholder upon his shares. Put into simple language, this merely means that the company has a permanent mortgage upon all shares for any debt whatsoever which may be due from the shareholder to the company. Hence, as is the case of other mortgagees, the company's lien is subordinate to any other mortgage or pledge of which the company has notice before its own lien attaches, that is to

say, before the debt to the company arises. To avoid this, it is not unusual to provide by what is known as an exemption clause that the company's lien shall have priority over all other charges of an equitable nature, whether created before the lien attaches or not.

The company is usually given the power to enforce the lien by sale of the shares. Unless such power is given by the Articles of Association the company must apply to the Court for an order to sell.

From the proceeds of the sale the company would satisfy its own debt and pay the balance, if any, to the shareholder.

Forfeiture

In addition to having a lien upon shares in respect of calls due from a shareholder, powers are usually given to the directors to forfeit shares if a member fails to pay any call that is due. The provisions giving this power are construed very strictly by the Courts, and if there has been an error in procedure, no matter how slight, the shareholder would be entitled to be relieved from the forfeiture, and could bring an action against the company for that purpose. The directors are further given powers as a rule to sell the shares so forfeited at the best price obtainable, and at any time, prior to the sale, may in their discretion cancel the forfeiture.

As the person who purchases the shares takes them with the call unpaid upon them the directors may make a call upon him. Apart from any special provision in the Articles the directors cannot sue the shareholder whose shares have been forfeited to recover calls made prior to the forfeiture, but it is usual to provide that the shareholder should remain liable for the calls notwithstanding the forfeiture. If the directors do in fact sue for such past calls, the amount they recover should be credited to the purchaser of the forfeited shares, so as to increase *pro tanto* the amount paid up on them The power to forfeit shares must be used solely for the benefit of the company, and not collusively, so as to benefit any particular shareholder to the detriment of creditors and fellow shareholders, for many shareholders with a large holding, and with an equally large liability outstanding thereon, would only be too happy if the directors would forfeit their shares and relieve them of a pressing liability. Hence any forfeiture of a large block of shares requires some explanation if the directors have not adopted that course in respect of all shareholders alike. A person does not escape liability altogether by the forfeiture of his shares, even where the directors have no power, or do not exercise the power that they have, to sue for calls due prior to the forfeiture if the company goes into liquidation.

The directors, with the sanction of the liquidators, can exercise their power of forfeiture even after the company has gone into liquidation. This is a useful power, as it not infrequently happens that there is some probability that the assets will prove sufficient after payment of all liabilities to provide for some return to the shareholders; and it is only fair that a shareholder, who is in default with the payment of his calls, should be compelled to pay them or suffer the penalty of forfeiture, with the consequent result of not being permitted to share in the distribution of assets.

ALTERATION OF CAPITAL

It is necessary to consider the way in which a company may alter its share capital. In the general case certain requirements are demanded by the statute; but there is one case which stands out separately from the rest, and is perhaps better treated by itself. When a company has accumulated profits which it would be permissible to distribute amongst shareholders by way of dividend, it may, if a special resolution is passed to that effect, instead of distributing the profits by way of dividend, pay the same amount to the shareholders in reduction of the paid-up capital on the shares, the unpaid capital on the shares being increased to a similar amount. Supposing a shareholder to have one fully paid-up share of £15, and that the company could, if it so chose, distribute to that shareholder on his one share the sum of £5 by way of dividend. Instead of paying the £5 as dividend, the company may return the £5 in reduction of capital, with the result that the shareholder would possess, instead of his fully-paid £15 share, a share £10 paid and £5 liability. Of course all shareholders must be treated alike. So far as actual assets are concerned, the company is in precisely the same position whether it distribute the sum at its command by way of dividend, or by way of reduction of paid-up capital. But until the company makes a further distribution of the profits by way of dividend, as presumably it would be entitled to do, the creditors of the company would undoubtedly be in a more favourable position, as the increase in the unpaid capital thus created would be an additional fund and security for the payment of their debts. It

will thus be seen that it is in the power of the majority of the shareholders to increase the liability upon the shares to the extent of accumulated profits. But the statute protects to a certain extent those who do not wish to incur this increased liability, for any shareholder may, within one month after the passing of the special resolution, give notice to the company that he desires the company to retain the amount, which otherwise would be payable to him The company must thereupon invest the amount so retained in trustee securities paying the interest thereon to him, and, as from time to time subsequent calls of the unpaid capital are made, must, so far as his shares are concerned, detain the call from the invested securities *pro tanto*.

A company may alter its share capital in various ways, providing power be given by the Articles, as is almost invariably the case. These powers can only be exercised by a special resolution, which means that notice must be given to the Registrar of Companies; and as such alteration of capital involves an alteration of the Memorandum of Association, all copies of such Memorandum issued subsequent to the special resolution must be altered in accordance with such resolution. A company may increase its share capital by the issue of new shares, and these shares may have a preference, both by way of capital and dividend, provided that the Memorandum of Association does not contain a condition to the contrary.

The Articles usually provide that any such increase of capital, if issued, should be offered first to the existing shareholders in proportion to the amount of their holding. If the shares are issued at their par value, but are likely to be saleable on the market at a premium, it is a common practice to issue to the existing shareholders, in respect of their rights to take the new shares, not an application form in the usual way, but to issue what are called renunciation letters, giving the recipient power to renounce the shares in favour of some third person in case he does not desire to apply for the shares himself. These renunciation letters would be saleable on the market for cash at a premium, and are of the greatest convenience to persons who desire to take an immediate cash bonus in lieu of selling the new shares on the market for special settlement (see Part IV); for selling shares for special settlement means that until the settlement has been appointed by the Committee of the Stock Exchange the holder of the shares would have to pay the application moneys and any calls that may be made by the company prior to the special settlement, or, in other words, lie out of his capital for some considerable time, which might well be a matter of inconvenience to him.

Again, a company may consolidate its capital for the purpose of dividing it into shares of larger denomination than before, or it may subdivide its shares into shares of a smaller denomination. This power is frequently exercised when, owing to the success of a company, the shares reach such a market price as to make it cumbersome to deal in.

Again, a company may convert its shares into stock or stock into shares. It is sometimes more convenient for a company to have its capital in the form of stock, and this is the usual method adopted in statutory companies, such as railway, water, gas companies, and the like. It has at least one advantage, it gets rid of the necessity of distinctive numbering, which is only applicable to shares. It is usual to provide that no holding be allowed less than a fixed minimum, and no fraction of that minimum be permitted.

A company may cancel any of its share capital not actually issued. Such cancellation does not amount to a reduction of capital in the ordinary sense of the words.

A company may by special resolution reorganize its capital so as to consolidate shares of different classes, or so as to divide its existing shares into shares of different classes. Thus, ordinary shares may be divided into preferred and deferred ordinary. This reorganization of capital must be confirmed by an order of the Court. Moreover, before any preference or special privilege attached to any class of share can be interfered with, a resolution must be passed by a majority in number of shareholders in that class holding three-fourths of the share capital thereof, and that resolution must be confirmed at a meeting of shareholders of that class. When these formalities have been gone through, the resolution binds the whole of the class.

As has already been shown above, the capital of a company may be reduced in various ways without the sanction of the Court, namely by forfeiture of shares for non-payment of calls, or by return of paid-up capital out of accumulated profits, or by cancelling shares which have not been taken or agreed to be taken. Generally speaking, a company has no power to accept a surrender of shares. If it were otherwise, it would be quite easy to defeat a principle that has always been recognized by the Courts—that a company must not reduce its capital except in those instances which are expressly provided for by the statute. In some cases, of course, a surrender of shares is permissible, namely, where the directors *bona fide* intend to forfeit shares for non-payment of calls, and the shareholder, to avoid any unnecessary trouble, surrenders his shares.

In all cases, other than those dealt with above,

the sanction of the Court is required for the reduction of capital. This precaution is necessary in the interests of creditors. In order to reduce its capital in the circumstances now to be dealt with, the company must have power to do so under its Articles of Association. If the Articles do not expressly contain such a power, they must be amended in the ordinary way by a special resolution so as to include such a power. To reduce its capital, a company must pass a special resolution to that effect. A company may reduce its share capital in any way, but there are three particular ways.

In the first place, a company may extinguish or reduce the liability in respect of share capital not paid up; thus, if the shares are of the nominal value of £10, with £5 paid up, the company may reduce the capital by extinguishing the £5 unpaid on the shares, with the result that the shares would then be £5 fully paid shares. The necessity for so extinguishing the liability might arise, for example, when there was no likelihood of the uncalled capital being required for the purposes of developing the business of the company, or where the majority of the shareholders would prefer not to have the liability of unpaid capital hanging over their heads. For it is always possible, should the company by any chance require fresh capital for developing its business, to increase the capital of the company again by the creation of new shares to be issued as required. But, although this arrangement might be very convenient for the shareholders concerned, it might not be at all to the liking of the creditors of the company, for they would be losing a substantial security. Before, therefore, permitting a reduction of this kind it is necessary to protect the creditors of the company.

Secondly, a company may reduce its capital by cancelling any paid-up share capital which is lost or unrepresented by available assets, either with or without extinguishing or reducing liability on any of its shares. This is the most common case for the reduction of capital. For it frequently happens that a company in a certain period of its existence sustains a serious loss, with the result that a large debit stands to the profit-and-loss account which would take years of successful trading to wipe out. Yet until such a debit is wiped out, the directors cannot distribute to the shareholders any profits which might be made in the succeeding years. To take a practical illustration: Supposing a company at its inception had a fully paid-up capital of £100,000 represented by assets, and in the first year, by some misfortune, it lost £50,000; then, although in the next nine years it should make £5000 per year profit, it would still be unable to pay any return to the shareholders by way of dividend because the £50,000 loss would not have been wiped out, although the company had no creditors whatever. As the law now stands, the company might have reduced its capital by £50,000 on the ground that it had been lost, or was not represented by available assets, and thus pay a 10-per-cent dividend to the shareholders on the reduced capital.

Thirdly, a company, either with or without extinguishing or reducing liability on any of its shares, may pay off any of its paid-up share capital which is in excess of the wants of the company. This case is very much the same as the case first mentioned, and can be dismissed with a few words. A company, it may be supposed, has a fully paid-up capital of £100,000 in 10,000 £10 fully paid shares. This capital may be represented by assets consisting in part of £50,000 cash. It chances that the company for the purposes of its business has no use whatever for the £50,000 cash. It accordingly decides to return it to the shareholders, thus making its capital only £50,000 in 10,000 £5 fully paid shares. These circumstances arise when a company gives up part of its business by disposing of it for cash For example, if an engineering company had extensive works in England and similar works in Canada, and decided to dispose of the Canadian branch for cash. If the purchase money were not necessary for the development of the English branch of the business, the best thing that could be done would be to reduce the share capital of the company by returning the money to the shareholders. It need scarcely be pointed out that any profit that might be made by such a transaction would be payable by way of a dividend to the shareholders, and would not concern the capital at all.

A special resolution having been passed to reduce the capital, the next thing to do is to obtain the sanction of the Court. Where there are no creditors the matter is a simple one and can be got through very quickly. The company advertises the fact that it is about to reduce its capital, and the Court, being satisfied, sanctions the reduction. Where the reduction involves the diminution of any liability in respect of unpaid share capital, the words "and reduced" must be inserted after the name of a company, wherever that name appears, from the time of the passing of the special resolution until such time as the Court may order—usually a few months. This addition, so long as it is imposed, is a permanent advertisement to persons dealing with the company of the fact that its capital has been reduced; as to the exact details of the reduction any person

can find out for himself by searching the file. Where the reduction does not involve either the diminution of any liability in respect of unpaid share capital, or the payment to any shareholder of any paid-up share capital, the words "and reduced" need only be added from the date of presenting the petition to the Court for its sanction. And the Court may dispense with the use of the words altogether.

The Court may, if it thinks fit, order the publication of the reasons for the reduction of the capital with a view to giving information to such members of the public as it may concern, such an order is not frequently made.

Where there are no outstanding creditors of the company, the duty of the Court in respect of granting its sanction to the reduction of capital is a simple one. It has not to consider the policy of the company in reducing its capital, whether it be for the benefit of the company or not; that is for the shareholders themselves to determine. The Court has only two things to consider. Firstly, is the reduction of capital fair to the different classes of shareholders? It is commonly the case, especially where there has been share capital actually lost, that the capital of one class of shareholders suffers much more than that of another. For example, where the capital consists of preference shares, ordinary shares, and deferred shares, the deferred shareholders would be bound to have their capital reduced to a much larger extent than the preference shareholders; this must be obviously so when it is considered that the probability of the deferred shares ever receiving a dividend, in the circumstances supposed, is really nil. But it is the Court's business to enquire into the scheme of reduction, and to see that minorities are not being unfairly treated. Secondly, the Court may enquire whether the scheme in any way affects the interests of members of the public who are likely to become shareholders.

Where, however, there are existing creditors of the company, the process of obtaining the sanction of the Court is of a much more laborious nature; it may take some months. Where the proposed reduction involves either diminution of liability in respect of unpaid share capital, or the payment to any shareholder of any paid-up share capital, it is very necessary that creditors should be protected, because in each case the security to which they are entitled to look for the payment of their debts is reduced, and they should have the right, therefore, to object to such reduction. The Court accordingly settles a list of creditors who are entitled to object, and, for the purpose of an accurate list, the names of creditors must be disclosed; there is a penalty for non-disclosure by the responsible officials of the company. In addition, a public notice is given of a date within which creditors who have not been entered on the list may claim to be so entered. If the company disputes the claim of a creditor, the Court will hold an enquiry of much the same nature as when a creditor seeks to prove in bankruptcy or liquidation.

In order to expedite matters, a company would do well to obtain the consent of creditors to the proposed reduction, but if any creditor refuses to consent, the Court may dispense with such consent upon the company securing the payment of the debt. When the Court is satisfied that the creditors have been properly protected, it may sanction the reduction. The Order of the Court and a minute of the Order, showing exactly the nature of the reduction, must be registered with the Registrar of Companies, and then the reduction of capital takes effect. From that date the liability of shareholders in respect of the reduced capital is at an end, subject to this: that if any creditor has not been entered on the list referred to above, either by reason of his ignorance of the proceedings, or of their nature or effect in respect of his claim, every person who was a member of the company at the time of the registration of the Order and minute is liable to contribute towards such debt to the same extent as if the company had been wound up the day before such registration. This, however, does not affect the rights of contributories among themselves.

POWERS TO BORROW MONEY

Having dealt with the share capital of a company, it now becomes necessary to consider the borrowing powers of a company, and in particular debentures and debenture stock.

The power of a company to borrow money may be an express or an implied power. A trading company has always an implied power to borrow, arising from necessity in connection with business. But a non-trading company, for example a club, or a hospital registered under the Act, has no implied power to borrow, and cannot therefore do so unless power is expressly given to it by its constitution. It is, however, the practice to give a company an express power to borrow by its Memorandum of Association, whether the company is a trading one or not. Usually, so far as

the Memorandum is concerned, the power is an unlimited power, but it may be otherwise provided. The Articles of Association should deal more specifically with the matter than the Memorandum As with the exercise of other powers, the power of borrowing should, as a rule, be given to the directors, but not generally speaking to an unlimited extent, as shareholders naturally wish to have some control over the directors. The limitation usually imposed upon directors is that loans shall not, without the sanction of the company in general meeting, at any time exceed the issued share capital of the company. The Articles of Association need not necessarily contain an express power to the directors to exercise the borrowing powers of the company; indeed, more often than not it is to be inferred from a general power given to the directors to exercise all the powers of the company other than those expressly provided by the Articles to be exercised in general meeting.

Once a company has power to borrow, whether expressly or impliedly, there is no limitation as to the mode in which it shall exercise its power. It may borrow either on security or without security, by a legal mortgage, or an equitable mortgage, by debentures, or promissory notes or otherwise. Borrowing on security will be dealt with more fully below. An overdraft at the bank is *pro tanto* an exercise of borrowing powers, and must be taken into account in considering whether or not the limit of the power to borrow money has been exceeded.

Borrowing in Excess of Powers

If the company borrows in excess of its powers the debt *pro tanto* is void, but a distinction must be drawn between a power limited by the Memorandum of Association and a power limited by the Articles of Association.

If a company can by its Memorandum only borrow to a limited amount, or by an expressly defined mode, then any excess of that amount or borrowing by any other than the defined mode is absolutely void, and cannot be ratified by the shareholders even if they desire to do so.

But if the limitation is imposed by the Articles of Association, the power by the Memorandum being unlimited, then *prima facie* borrowing in excess of that power is void, but in certain cases the irregularity can be cured.

Every person who lends to a company is assumed to know whether the company has power to borrow the amount lent, whether in fact he knows or does not know; he can either demand to see the Memorandum and Articles before he lends, or he can see those documents on the file. But he is not assumed to have knowledge of any irregularity on behalf of the company in the exercise of its legitimate powers; it will be assumed in his favour that everything that was to be done has been regularly done. For example, if the company has power to borrow by its directors up to £10,000, upon a resolution duly passed by the Board of Directors, a lender to the company is entitled to assume that a resolution was duly passed before the directors borrowed from him. He is not entitled to assume, on the contrary, that the company has passed in general meeting a special resolution empowering the directors to borrow in excess of £10,000, for such a special resolution is not merely a matter of internal management; as already pointed out above, such a resolution must be filed with the Registrar of Companies, so that any person intending to advance moneys to the company could examine the file before so doing. Nor in any case will a person be protected who has knowledge, or must be assumed to have knowledge, of an irregularity. Thus, if directors, who have power to borrow only with the assent of the company in general meeting, themselves choose to lend without such assent, they would not be entitled, as a stranger would, to escape the penalty of the irregularity.

Even though a loan, and with it any charge by which it is secured, be void by reason of its being in excess of the powers of the company, nevertheless it does not always follow that the person who advances the money is deprived of all remedy. If he can recover the money whilst it is still in the possession of the company, that is to say, before it has been expended by the company, he is entitled to do so. For example, if his cheque, say for £1000, has been paid into the company's banking account, he might have a good chance of getting his money back if he discovered his mistake and took prompt legal action before the account was drawn upon. Or again, if the money has been used to pay off creditors of the company, he would, *pro tanto*, be allowed to stand in the place of such creditors and sue the company for the amount of their debts. But he would not be entitled to any securities that such creditors might have had for the payment of their debts, and his own security, if he had any, would be void.

If he should have no remedy against the company, he would in many cases have a remedy against the directors, for the directors in borrowing hold themselves out as having power to borrow, and they are therefore in the same position as any other agent who exercises an authority which he has not got, that is to say, they are

personally liable on what is technically called a breach of an implied warranty. But if a person himself knows of the irregularity, he cannot recover at all against the directors, as he has no ground of complaint.

Security

A company, like a private person, usually borrows upon security, it can charge the whole or any part of its property, whether consisting of land or otherwise; the charge may be by way of legal mortgage or equitable mortgage. It may be upon its uncalled capital providing that such a charge is not expressly or impliedly prohibited, uncalled capital is available always for the payment of the creditors of the company, and when there is a charge upon it the creditors in whose favour it is charged have the first claim.

Floating Charge

A very common form of equitable mortgage is a floating charge upon the undertaking of the company. Such a charge does not prevent the company dealing with its assets by sale or otherwise; obviously this must be the case, for otherwise the giving of a floating charge by the company would put an end to the company's business, whereas the very object of giving the charge is to obtain a loan for the purpose of carrying on its business. But as soon as the company is in default, a matter which will be dealt with later, so that the principal moneys become due, the charge becomes a fixed charge, and the company can only deal with its assets subject to the charge. The same result follows upon the winding up of the company. In the case, however, of debentures secured by a floating charge, if a receiver is appointed, certain preferential payments must be paid out of the assets coming into the receiver's hands in priority to the payment of the principal moneys due to the debenture holders. These preferential payments are the same as those which are required by the statute to be paid in priority to all other debts in the case of a company being wound up (see p. 177). *Prima facie*, a company is entitled to create a mortgage on any specific part of its property in priority to any existing floating charge, for it must be remembered that until a floating charge becomes a fixed charge the company has power to deal with its property in any way it pleases, and a specific mortgage is only one way of dealing with it. It is true that very frequently it is stipulated that no mortgages should be created in priority to a floating charge; no person who has notice of such a stipulation can obtain a mortgage in priority to such floating charge, but if a person has no notice of such a stipulation, he may.

Charge on Land

One of the best and the most common securities for the repayment of money lent is a charge upon the land belonging to the company. A mortgage of such land is effected precisely as if the land were the property of a private person But there are many companies registered in this country which have land, or, to use a more comprehensive expression, real estate, situated in foreign countries. In such cases it is necessary to see that the instrument creating the charge is in accordance with the requirements of the law of the country where the real estate is situated, otherwise some difficulty may be created in enforcing the charge, should the company be in default and have no tangible assets over here.

The instrument creating the charge may be an ordinary deed between the company and the person who advances the money to secure which the charge is given, but in the case of trading companies the instrument giving the charge is usually a debenture or a series of debentures, or the property to be charged is conveyed by the company to trustees by a trust deed on behalf of the debenture holders. Before, however, dealing with this important branch of company law, it would be well to consider the statutory provisions affecting mortgages by a company generally.

The aim of the legislature has been to compel the fullest publicity by the company of the mortgages or charges created on its property. This is in the highest interests of those who are about to give credit or have dealings with the company, and equally in the interests of existing shareholders and those who are inclined to become shareholders. It is obviously of little use to know what are the actual assets of the company unless it is possible to ascertain to what extent, if any, those assets are charged. The method accordingly adopted to ensure this publicity is to compel the company to file the instruments creating the charge with the Registrar of Joint-Stock Companies, and further to keep a register of such charges at its own registered office. Particulars of certain mortgages, together with the instrument, if any, by which the mortgage is created or evidenced, must be filed with the registrar; there is a penalty upon those responsible for any default. The mortgages in question are: (1) a mortgage to secure any issue of debentures; (2) a mortgage on uncalled capital; (3) a mortgage which, if created by an individual, would require to be registered as a bill of sale;

(4) a mortgage on land; (5) a mortgage of the book debts of the company; (6) a floating charge on the undertaking of the company. It must be particularly remembered that the instrument creating the charge itself must be filed, although in the case of a series of debentures without a trust deed it is sufficient if one of the debentures is filed. The registrar keeps a register of charges so created which indicates the date of creation, the amount secured, particulars of the property charged, and names of the persons entitled to the charge. If the instrument and particulars are not furnished within twenty-one days after the creation of the charge, the security is void as against any creditor or liquidator of the company. But although the security is void in such a case, the obligation to repay the money lent remains, and it is immediately payable; the effect being to reduce a creditor, intended to be a secured creditor, to the level of a simple creditor. If the omission to register is due to accident or inadvertence or other sufficient cause, or is not of a nature to prejudice the position of shareholders of the company, or is due to any other just ground, the Court may extend the time for registration beyond the twenty-one days, on terms. It is the usual practice to impose a condition in such a case that the secured creditor should not have any priority over those who have become creditors of the company before the date of the deferred registration. Similarly the Court will correct any misstatement made in the particulars of the charge furnished to the registrar.

If the mortgage is created outside the United Kingdom upon property outside the United Kingdom, it is sufficient to file with the registrar a copy of the mortgage within twenty-one days from the time within which it might reasonably have been expected to reach this country. If the mortgage is created in this country, but concerns property outside this country, the instrument creating the mortgage may be sent for registration notwithstanding that further proceedings are necessary to make the mortgage valid in the country where the property is situated.

Where there are a series of debentures containing a charge, to the benefit of which the debenture holders of that series are entitled *pari passu*, then within twenty-one days the following particulars should be given to the registrar. (1) the total amount secured by the whole series; (2) the dates of the resolutions authorizing the issue of the series, and the date of the covering deed, if any, by which the security is created or defined; (3) a general description of the property charged; (4) the names of the trustees, if any, for the debenture holders; with these particulars there must be delivered the trust deed, if any, containing the charge, and if not, one of the debentures. If there is more than one issue, then as regards subsequent issues it is only necessary to give particulars of the date and amount of such issue, and failure to do this does not affect the validity of the debenture issued.

In the case of all issues of debentures, particulars of any commission or allowance or discount paid directly or indirectly by the company to any person in consideration of his subscribing or agreeing to subscribe, or procure subscriptions for any such debentures, must be included. If debentures are deposited merely as security for a debt, as is very often the case when companies are requiring an overdraft from their bankers, such debentures must not be considered as being issued at a discount.

The registrar gives a certificate of any mortgage registered, stating the amount thereby secured, which is conclusive evidence that the requirements as regards registration have been complied with. The company must endorse on every debenture or certificate of debenture stock, a copy of the certificate of registration; this, however, does not apply where the charge has been created and registered after the issue of the debenture.

It is the company's duty to register charges, but, if not done by the company, the person entitled to the charge may register it himself, and charge the company with all the expense to which he has been put. The register is open to the public for inspection at a charge not exceeding one shilling.

A copy of every instrument requiring registration must be kept at the registered office of the company; in the case of a series of debentures, it is sufficient to keep a copy of only one of such debentures.

When the debt has been satisfied to secure which the charge was created, the registrar may enter up a memorandum to that effect in the register, and the company may require him to furnish it with a copy thereof.

These requirements as regards registration apply to all charges created after the 1st July, 1908. Prior to this date, the register contained particulars of charges created since 1900, when the Companies Act of that date came into force. In order to obtain a complete record of all outstanding charges not appearing on the register, which would have required registration had they been created subsequent to the 1st July, 1908, the statute required that within three months from that date every company should forward a statement of the total amount of debt outstanding at that date, secured by mortgages created before that date, and which were not already registered by virtue of the

Act of 1900. There is a very heavy penalty upon all officials of the company who have been knowingly in default in fulfilling the requirements of this provision, but any default which may in fact have been made in no way affects the validity of the mortgages concerned.

A company must keep a register of mortgages specifically affecting the property of the company, entering up therein a short description of the property affected, the amount of the charge, and the names of the persons entitled. There is a penalty for any default upon the person responsible. Any creditor or member of the company has a right to inspect the register and copies of the instruments creating the charge, which it will be remembered must be kept at the company's office. No charge can be made for this inspection. Any stranger can also inspect at a charge not exceeding one shilling.

Debentures and Debenture Stock

The most usual method adopted by companies in which the public are at all largely interested, of borrowing money for prolonged periods is by means of debentures or debenture stock. A prosperous company can, of course, always obtain capital by the issue of fresh shares, which may or may not necessitate an increase of its existing share capital. But so long as it can offer a good security to lenders, and its prosperity is such as to assure the payment of interest upon capital, it is usually preferable up to a certain point to borrow money at a low rate of interest rather than to issue shares upon which a large dividend might have to be paid. There is this further advantage, that share capital, once it is issued, can only be extinguished with the consent of the shareholders, and this consent would not be naturally obtained so long as the shares were receiving a satisfactory dividend, in spite of the fact that the company might not any longer require the money for which the shares were issued; whereas with borrowed capital, it is usual to provide that the company shall have power to repay the same at any time upon giving due notice.

No definition is given of debenture—a term very loosely used. But for the most part it is an instrument under the seal of the company (it need not necessarily be so) whereby, in consideration of a loan made, the company undertakes to repay the same, with interest in the meantime, and upon certain conditions which are usually endorsed upon the back of the document. Debenture stock is used with a somewhat different meaning. It represents the mass of borrowed capital, in respect of which the company issues a stock certificate for the amount to which the company is indebted to the particular individual to whom the certificate is issued, the borrowed capital in question being secured upon property of the company by means of some other deed in the form of a trust deed, which is referred to in the certificate It is not essential that either debentures or debenture stock should be secured upon property of the company, but it is rarely otherwise.

Debentures may be divided into two main classes—debentures payable to the registered holder, and debentures payable to bearer. These kinds of debentures vary in nature according to whether the interest is payable by coupons attached to the debenture itself, or direct to the registered debenture holder, or by endorsement of payment upon the debenture—a method seldom adopted. In some cases, again, the debentures are to bearer, with an option to convert them into registered debentures if the holders so desire, very much the same as share warrants, discussed above, can be converted into registered shares.

It is now well settled that debentures to bearer of a British company are negotiable, unless there is some condition in the debenture itself which restricts its negotiability. The result is that a purchaser who takes a bearer debenture for value without notice of any defect in the title of the vendor is entitled to keep the debenture as against any other person. Hence, owing to the easy method in which bearer debentures may be transferred from seller to buyer, they are often adopted by companies. It may happen that, although a purchaser has no notice of any fraud on the part of the vendor, yet he has notice that the vendor has only a limited right to deal with the debentures. In such a case, whether he knows the actual extent of the vendor's limited right or not, he is bound by the actual right of the vendor. For example, if a person knows that the intending vendor has only authority to pledge the debentures, he would purchase them from him at his own risk.

Registered debentures are registered with the company, and when sold the name of the purchaser is entered in the place of the vendor. The register of debentures is kept very much in the same way as a register of shares, and much the same arrangements are made as regards the form of the transfer and the cost of registration.

The same remarks apply to debenture stock where certificates are issued for the amount of stock to which the holder is entitled.

Unless otherwise provided, a company must have ready for delivery debentures or certificates for debenture stock within two months from the date of issue or registration, as the case may be.

The register of debentures must be open to the inspection of registered holders and to the shareholders, and a copy may be demanded upon payment of sixpence for every hundred words. The register, however, may be closed for a certain period during the year, if so provided for by the Articles. The register is nearly always closed for the purpose of paying interest, for much the same reason as the share register is closed. A holder of debentures may further require a copy of the trust deed, if any, to be sent to him upon payment of the sum of one shilling.

It will be remembered that the remarks above with reference to a prospectus apply to the issue of debentures as well as the issue of share capital.

The date fixed for payment is in accordance with the requirements of the company—it may be for a few years or for a long period, or the debentures may be permanent and subject to repayment on a remote contingency Frequently there is a special condition giving the company the option to redeem at a given price, usually at a few pounds premium. Again, the method for redemption adopted is sometimes by drawings, that is to say, a certain portion of the debentures are redeemed annually, the actual debentures to be paid off being decided by lot.

As will be seen, there are also conditions upon which the debentures become repayable.

The charge varies in accordance with the property to be charged, but in the majority of cases the undertaking of the company is charged, and all its property, present and future, including uncalled capital. In so far as a specific charge is given on the property, it will be seen that this is not a legal charge, because the property itself is not transferred to the debenture holder; the charge is only an equitable one, and is enforceable as hereinafter explained. The clause may refer also to a trust deed whereby a charge is given, and this trust deed is in some cases the only instrument giving the charge, but it is more usual to give a charge in the debenture itself, even though a trust deed is executed.

Endorsed upon the debentures are the conditions under which the debenture is issued, which vary widely in accordance with the particular contract that the company desires to make with the public who are to advance the money. There are, however, certain conditions which are to be found endorsed on most debentures, and these may be dealt with briefly here.

The first condition usually provides that all debentures of the issue shall rank *pari passu* in point of charge without any preference or priority one over the other. This is very essential in order that no preference may be created between the various debenture holders, in spite of the fact that the debentures of the series are issued at various dates

A company has now the power of reissuing debentures that have been redeemed, unless the Articles or conditions endorsed on the debentures provide otherwise. This cannot be done, however, when there is an obligation on the company to redeem the debentures, for that would amount to a breach of the contract; it is obvious that where there is an obligation to redeem from time to time, the debentures remaining unredeemed have the greater security the more debentures that are redeemed. Debentures which are reissued must be restamped, as on an original issue. Where debentures are deposited to secure bankers' advances on current account, the debentures are not redeemed by reason only of such account ceasing to be in debit.

The first condition usually goes on to provide that the charge is a floating charge on the undertaking of the company, save as to any property specifically charged. There are conditions dealing with the register of debentures, the closing of the register, and the transfer of debentures, which differ very little in nature from Articles of Association dealing with share capital.

A most important condition which ought to be inserted in all debentures is one to the effect that the company will pay the principal moneys and interest secured by the debenture to the registered holder, free from all equities which may exist between the company and the original or intermediate holder. Apart from such a condition, a buyer could only take the debenture from the vendor subject to any equitable charge that the company might have. For example, if the holder had obtained the debenture by means of some fraud which would disentitle him to claim the principal moneys from the company, a purchaser without notice for value would be in no better position than his vendor. But the above condition would free him from such a position.

A condition which often constitutes a great inducement to investors is one that gives the debenture holder an option within a specified time of taking shares in lieu of the debentures. This invests the debenture with an element of speculation, for should the shares rise in market value, the value of the debenture would increase correspondingly.

There is usually a condition which gives the company power to pay off the principal moneys whenever it thinks fit, upon giving six months' notice. But sometimes the debentures are intended to be irredeemable.

The interest on debentures is payable from the

assets of the company, and it is immaterial whether the company is making an income or not. Occasionally there is a condition that the interest shall only be paid out of the income or profits of the year.

The principal moneys should be conditioned to be payable upon the happening of either of the following events. Firstly, if the company should make default for a specified period, usually about six months, in the payment of the interest, and the holder before such payment of interest gives notice of his intention to call in the principal moneys. Secondly, if an effective order or resolution is passed to wind up the company.

When the principal moneys become payable, the debenture holders are usually empowered to appoint a receiver. As soon as the receiver is appointed, the whole of the business is carried on for the benefit of the debenture holders, and it is the receiver's business to realize the assets and pay off the principal moneys due upon the debentures. It is usual to give him express powers as to dealing with the company's property in the condition endorsed on the debenture which deals with his appointment. In important companies, having a large capital and a number of shareholders, the company must be in a very serious way indeed before the debenture holders make use of this power, which really means the end of the business. Usually some arrangement can be come to which will have the effect of staving off such action. But in small companies, where the shares were probably valueless almost from the inception of the company, this power of appointing a receiver amounts frequently to a fraud upon the creditors, which the arm of the law is, as it now stands, unable to reach. For so long as the business is paying, the creditors are paid, but as soon as the company begins to get into low water, the debenture holder steps in and requires the assets for himself, in priority to creditors who are seeking to enforce their just rights by levying execution on their judgment debts.

The receiver is generally expressed to be the agent of the company; he should, however, always be careful not to make himself personally liable for the debts of the company, which he may incur whilst carrying on the business of the company preparatory to disposing of it. He can avoid making himself personally liable if he takes care to contract as agent of the company. In any case, he is entitled to indemnify himself out of the assets of the company so long as he is acting within the scope of his authority. If there is any doubt, owing to the sparseness of the assets of the company, as to his ability to recoup himself out of such assets, which is not uncommonly the case in small companies, he ought, in order to protect himself, to request the debenture holders personally to indemnify him.

But a debenture holder is not bound to look to the conditions of his debenture for the appointment of a receiver. It is often preferable to apply to the Court to appoint a receiver. Any debenture holder, immediately the company is in default in payment of the principal moneys, may commence an action on behalf of himself and other debenture holders to enforce his security. Judgment usually goes as a matter of course, and a receiver is appointed by the Court to protect the property on behalf of the debenture holders. A receiver appointed by the Court is in certain respects different from a receiver appointed under the powers contained in the debenture itself, for he is an officer of the Court, and is personally liable for all transactions into which he enters in respect of his receivership, looking to the estate of the company for his indemnity. Like other receivers appointed by the Court, he must from time to time file his accounts of receipts and payments, indeed, this must be done even by a receiver appointed under the powers contained in the debenture itself, although in this case the particulars are filed with the Registrar of Companies. Where a receiver is appointed in a debenture holder's action, it is usual to appoint him also manager of the business of the company, with a view of continuing the business until such time as it can be sold to the advantage of all parties concerned. With this end in view, it may be necessary to apply to the Court to empower the receiver and manager to borrow money for the purpose of protecting the business, the loan being secured by a charge upon the property in priority to the debentures themselves. This is often a necessary course of action so as to preserve the business, which may be the main asset to which the debenture holders are to look. If a receiver or manager is appointed either by the Court or under the powers contained in the debenture, notice must be given of the fact within seven days to the registrar.

A debenture holder is not always obliged to wait until a company is in default before he brings an action on behalf of himself and the other debenture holders to enforce his security. He can commence the action whenever he is in a position to persuade the Court that his security is in peril, as, for example, where the company passes a resolution to wind up voluntarily, or when the company is proposing to part with some security upon which he has a charge, or when creditors of the company have obtained judgment against the company, and are in a position to levy execution upon the property of the company; for a

debenture holder has a prior right to the judgment creditor to look to the property of the company for the payment of his debt.

In an ordinary debenture holder's action the debenture holder, having issued his writ, gives notice to apply to the Court for the appointment of receiver and manager until the trial of the action. This application comes on for hearing within a few days after the issue of the writ, when the company appears and consents to treat the application as the trial of the action itself, and submits to judgment. From that time, it is simply a matter of realizing the property of the company to the best advantage, until the debenture holders have been paid their principal moneys, interest, and costs, the accounts being always under the control of the Court.

The only other condition in a debenture to which it is necessary to refer, is that dealing with the powers of the majority of debenture holders to bind the minority. It is frequently necessary in trading companies, where there is in existence a large amount of borrowed capital in the form of debentures, to modify in various ways the position of the debenture holders themselves and of the company. Occasions arise in innumerable ways. Thus, to take but one example It may happen that the only security to which the debenture holders can look is the business of the company, which might be in danger of coming to a sudden standstill owing to a lack of available financial resources. In such circumstances it might be that if the debenture holders were to attempt to realize their security by the sale of the business, they would only obtain a small proportion of their principal moneys. Such being the case, it would be idle to attempt to raise fresh loans by means of debentures to rank after the existing debentures, although it might be possible to obtain a small amount upon a security to rank in priority. The debenture holders, recognizing that their only chance of ever being paid the amount of their debentures would be to continue the business in the hope that it would meet with more prosperous times, might be willing to achieve that end by allowing a small issue of debentures to be made to rank in priority to their own security. The debenture holders would accordingly meet and would vote upon a resolution submitted to the meeting, but unless there were a clause in the debenture empowering the majority to bind the minority, the whole of the business of the company might be wrecked and the debentures themselves rendered valueless owing to the obstinacy of a minority of holders no matter how small. The Court has certain powers to enforce an arrangement.

The following is the form of a simple debenture:—

Form No..... .

ORDINARY FORM OF DEBENTURE WITHOUT TRUST DEED

Debenture bond for £100 (being part of an issue £ .... of debentures of £100 each, carrying interest at five per cent per annum).

No..... . £100.

(1) The . ... Company, Limited (hereinafter called the Company), in consideration of value received, will, on the . .. ... day of . .... ., or on such earlier day as the principal moneys hereby secured become payable in accordance with the conditions endorsed hereon, pay to John Smith of ...., or other, the registered holder for the time being, the sum of £100.

(2) The Company will, during the continuance of this security, pay the registered holder thereof interest at the rate of five per cent per annum, by half-yearly payments, on the ..... day of ..... and the . .. .. . day of . ... in each year, and the first of such half-yearly payments shall be made on the ..... . of .... . next.

(3) The Company hereby charges with the payment of such principal and interest [the whole of its real and personal property, present and future, and the undertaking, goodwill, and business of the Company, and its uncalled capital].

(4) This debenture is issued in accordance with the conditions endorsed hereon, which are to be deemed part of it.

Given under the common seal of the Company, this ... . day of .....

The common seal of the
Company is affixed hereto
in the presence of:

Conditions Endorsed on the Back

The conditions referred to herein:—

(1) This debenture is one of a series of ..... debentures, each for securing the principal sum of [£100], issued or to be issued by the Company. The debentures of this series are to rank *pari passu* without any preference or priority over one another, and the charge herein given is to be a floating security.

(2) The register of the debentures will be kept at the Company's registered office, and therein will be entered the names, addresses, and descriptions of the registered holders, and particulars of the debentures held by them respectively. Such register will at all reasonable times be open to the inspection of any registered holder thereof, or

his legal personal representatives, or any person authorized in writing by him or them.

(3) Every transfer of this debenture must be in writing, under the hand and seal of the registered holder or his legal personal representatives. The transfer must be delivered at the registered office of the Company, with a fee of . ..... and such evidence of title or identity as must be reasonably required, and thereupon the transfer will be registered and a note of such registration endorsed hereon.

(4) The principal moneys and interest hereby secured will be paid without regard to any equities between the company and the original or any intermediate holder thereof. The receipt of the registered holder shall be a good discharge to the company for the same.

(5) At any time after .... the Company may give notice in writing to the registered holder hereof, his executors or administrators, that it is their intention to redeem all or any portion of the debentures of this series, and upon the expiration of ..... months from the date of such notice the principal moneys hereby secured shall become payable

(6) The principal moneys hereby secured shall immediately become payable: (*a*) if the Company makes default for a period of six calendar months in the payment of any interest hereby secured, and shall not, within one month after receiving notice in writing from the registered holder, pay the amount in default; (*b*) if an order is made, or an effective resolution is passed for the winding up of the company.

(*Other conditions may be inserted*, e.g. as to meetings of debenture holders.)

(7) At any time after the principal moneys hereby secured become payable, the registered holder of this debenture may, with the consent in writing of the holders of the majority in value of the outstanding debentures of this series, appoint by writing under their hands any person to be a receiver of the property charged by this debenture. Such receiver shall have all the powers which are conferred by the Conveyancing and Law of Property Act, 1881, upon a receiver appointed in accordance with that Act. In particular such receiver shall have power—

(*a*) To take possession of, collect, and get in the property charged by these debentures.

(*b*) To carry on or arrange for the carrying on of the business.

(*c*) To sell or arrange for the sale of any of the property charged by these debentures, giving seven days' notice to the Company of his intention to sell.

(*d*) To make any arrangement or compromise which he should think expedient in the interest of the debenture holders.

(8) The principal moneys and interest hereby secured will be paid at the registered office of the Company.

As has already been mentioned, the debentures are often secured by a trust deed. The trust deed resembles an ordinary legal mortgage. It has this advantage over a charge in the debenture itself—the company transfers the property to be charged direct to trustees, at least so far as the freehold and leasehold property belonging to the company is concerned. The parties to the trust deed are the company on the one part and the trustees on behalf of the debenture holders on the other part. In well-known companies the trustees would gene rally be selected from public men. Under the trust deed, it is usually provided that the company shall have possession of the property mortgaged until default has been made. There are in addition clauses stipulating as to when the security shall become enforceable, the power of the trustees to sell under certain conditions and to deal with the proceeds, and to concur in the company's selling when to the advantage of the company itself, the proceeds to be invested in such manner as provided by the clause; powers to carry on the business of the company, and to see that the business of the company is being carried on effectually, then there would usually be undertakings by the company to keep the premises mortgaged in repair and properly insured, and to pay the principal moneys at the time stipulated. In addition, the deed may contain clauses laying down rules and regulations to govern the dealings of the debenture holders *inter se* Thus there would be regulations as to the meetings of the debenture holders, voting, power of majority to bind minority, keeping of minutes of the meetings, payment of salary of trustees, power of appointment of receiver, and any other rules and regulations which it may be thought fit to insert.

As a general rule of law, it is not possible to enforce a contract to advance money, but the Court has power to compel a person to take up and pay for a debenture, if he has contracted with the company to do so.

PRIVATE COMPANIES

For many years the law has recognized a practical distinction between public and private companies, although it is only within recent years that a private company has been defined by statute. From a practical point of view a public company is a company whose shares are issued and held indiscriminately by members of the public, whereas in the case of a private company the shares are held by a few persons who, in most cases, actually owned the business before it was turned into a limited company. The number of private companies has increased enormously of late years. There are both advantages and disadvantages attending the transformation of a business into a private limited company. So far as the management of the business is concerned, the change from the one to the other makes no difference, for the business of the company can be carried on, and is usually carried on, in precisely the same way and under the same responsible management as before. By turning the business into a company, a person is able to limit his liability, for he is not liable for the debts of the company in which he now holds shares even though he hold every share in the company, other than the signatory shares Of course in many cases this is not a matter of very much concern, for when the company's credit is slender it is necessary for him, in order for him to obtain credit for the purposes of the company's business, to guarantee personally the payment of the company's debts. But as a limited company he can often obtain the financial assistance of friends and of members of his family who might desire to be interested in the profits of his business, but who are averse to becoming his partners with the liability consequent thereon, moreover, he has the further advantage of being able to raise money on the security of debentures, a much easier device than any means of raising money in a private business.

Again, the owner of a large business who desires to benefit members of his family upon his death or retirement will often find it more convenient to turn his business into a limited company. He might then leave by his will definite shares to each, whilst his own death would not cause any difficulty in the carrying on of the business, which in the eyes of the law would belong to a different entity than himself, viz. a limited company.

A private company is relieved from many of the restrictions imposed upon public companies. The reason of this is quite clear when it is considered that the only object of imposing these restrictions in the case of public companies is for the purpose of protecting the members of the public who invest therein, whereas in a private company there is no necessity for such protection, as it differs from a practical point of view very little from a private partnership where every member knows exactly what is going on. Thus in the case of a private company there is no necessity to file annual statements in the form of a balance sheet, or to issue and file a statutory report within seven days after holding the statutory meeting. The restrictions upon the appointment of directors in the case of a new public company do not apply. As no prospectus is issued, the long list of particulars which must be inserted in the prospectus of course has no meaning in the case of a private company. But, what is more important, a private company is not obliged to file a statement in lieu of a prospectus. The restrictions upon going to allotment, and upon commencement of business, do not apply. All these matters in the case of public companies have been fully considered, and the extent of relief that is granted to a private company will be understood.

For the purpose of the statute a private company means a company of which the Articles contain the following provisions: (1) The right to transfer the shares must be restricted. This provision may be carried out in various ways and with a more or less degree of minuteness. It should provide in one form or another that no member may transfer his shares without first giving an opportunity to the other members of the company to take them. (2) The number of its members must be limited to fifty, exclusive of persons who are in the employment of the company. (3) Any invitation to the public to subscribe for any shares or debentures of the company must be prohibited.

The Articles of Association must contain at least the above conditions; in other respects a private company may adopt Table A, but this is not usual without considerable modification, for the general machinery provided by Table A will not be adaptable to a private company. But a private company, being from its practical point of view a private business, it is very common to draft the Articles so as to put the managing director of the company in the same position as he was when head of the firm. Thus he is frequently made managing director for life or so long as he holds a certain proportion of the shares, and is given very wide powers indeed of management. So Articles can be framed to suit

the case of a number of partners or members of a family, to put them, as directors, on much the same footing as when the business was a private one

As regards the accounts, it is often very advisable that there should be no publicity as to the financial position of the company, and there are therefore usually stringent provisions restricting the publication and circulation of the balance sheet.

Another provision, and one which at first seems to be an arbitrary one, is the power sometimes given to a fixed majority of the holders in value to compel another member to dispose of his shares at a price to be fixed by agreement or valuation. Such an Article has been held to be perfectly legal, and it is a useful one, for in a private company there may be a squabble amongst members of a family who hold the shares, which may make it impossible to act in concert. Under such circumstances it may be well for everybody concerned that somebody should retire, and as it is not infrequently the case that the person who is in the wrong and in the minority is the last person in the world to consent to retire, it is useful and fair that power should be in the majority to compel him to retire, so long as he is compensated on a proper valuation.

A private company can at any time convert itself into a public company; the occasion to do so may arise when the owner of nearly all the shares in a private company wishes to realize his shares for cash by issuing them to the public. To carry out the conversion, the private company must pass a special resolution to that effect, and must file with the Registrar of Companies a statement in lieu of a prospectus, such as a public company would have to file before allotting shares or debentures, and must further file a statutory declaration, such as a public company would have to file before commencing business A public company may also be able to convert itself into a private company.

WINDING-UP OF COMPANIES

Having dealt with the creation of a company, it now remains to deal with the winding-up. Before, however, dealing with this most important branch of company law, it is necessary to say a few words upon a useful provision whereby a company, or the creditors or members, may, with the sanction of the Court, compel an arrangement. The Court will exercise its powers sparingly, but if it is in the real interests of the majority, the power can be used with great effect to prevent a minority from wrecking the company. The first step is to make an application in a summary way to the Court to summon a meeting of creditors or members when there is a proposal on foot for an arrangement between the company and the creditors or the company and members. The application may be made by the company, or a member, or a creditor, or, if the company is being wound up, the liquidator.

At the meeting a majority in number representing three-fourths at least in value of the creditors or members present at the meeting either in person or by proxy may agree to a compromise or arrangement with the company. This compromise must then be submitted to the Court, and if the Court sanctions it, it is binding upon all the parties concerned. It is sufficient if the matter only concerns a certain class of creditors or a certain class of members; the same procedure precisely applies. For example, the proposed arrangement or compromise may only concern second-debenture holders; in such a case it is of course only the second-debenture holders that are summoned by the Court to pass a resolution on the proposed arrangement.

There are three modes of winding up a company, namely: (1) by the Court, (2) voluntarily; (3) subject to the supervision of the Court. The last mode is not often resorted to, as the advantages that once attended it can now be equally well obtained by voluntary liquidation.

The winding-up of a company involves the payment of the creditors of the company in due course and the distribution of the remaining assets, if any, amongst the shareholders. In so far as is necessary, the unpaid capital of the company must be called up to meet liabilities of the company.

Contributions

Every person who is liable to contribute to the assets of the company is termed a contributory, and every past and present member is liable to contribute to the assets of the company to an amount sufficient for the payment of its debts and liabilities and the expenses of the winding-up, subject to the following qualifications: a past member who has ceased to be a member for a year or upwards before the commencement of the winding-up is not liable to contribute at all; a past member is not liable to contribute in respect of any debt contracted after he ceased to be a member, nor is he liable to contribute in any case, unless it appears to the Court that the existing members are unable to provide their contributions; no past or present

member is liable to pay an amount exceeding the unpaid capital on his shares in respect of which he is liable as a present or past member

If the company is in debt to a member in respect of dividend profits, or otherwise, such debt is postponed until the other creditors of the company have been satisfied.

It occasionally happens that a shareholder applies before the company goes into liquidation to have his name removed from the register on grounds which have already been discussed. In such a case he is not a past member in the sense that he is liable to contribute to the assets of the company if it be wound up within the year. But it is otherwise in the case of forfeited or cancelled shares under the Articles, the holders of which are deemed to be past members and contributories.

Winding-up by the Court

The first mode of winding-up mentioned above, namely, winding-up by the Court, is the one resorted to when it is considered in the best interests of the creditors or shareholders that the winding-up should be effected publicly under the constant supervision of the Court.

Usually it is sufficient to leave the company to wind up its own affairs just as it is left to carry on its own business.

A company may be wound up by the Court. when the following circumstances arise: (1) If the company has by special resolution resolved that the company be wound up by the Court. This means that the shareholders themselves prefer the more expensive mode of winding up by the Court to the cheaper voluntary method, and should therefore only be resorted to if the shareholders consider in their own interests that the affairs of the company should be properly investigated. As will be seen later, the liquidator appointed is an official of the Court, and in the winding-up of the company under his supervision there will be no opportunity of concealment. (2) If default is made in filing the statutory report or in holding the statutory meeting. The meaning of these terms has been explained above. (3) If the company does not commence its business within a year from its incorporation, or suspends its business for a whole year. (4) If the number of members is reduced, in the case of a private company, to below two; in the case of a public company, to below seven. (5) If the company is unable to pay its debts. This is a very common ground for applying to the Court for a compulsory order. A company is deemed to be unable to pay its debts: (i) if it is indebted in a sum exceeding £50, and the creditor demands payment in writing, and default is made for three weeks either in payment or in securing the amount to the satisfaction of the creditor. But it is sufficient if it is proved to the satisfaction of the Court that the company is unable to pay its debts even though there be no debt exceeding £50 (ii) If in England or Ireland, execution or other process issued on a judgment decree or order of any Court in favour of a creditor of the company is returned unsatisfied in whole or part. As far as Scotland is concerned, a company is deemed to be unable to pay its debts if the *inducræ* of a charge for payment or an extract decree or an extract registered bond or an extract registered protest have expired without payment being made. (6) If the Court is of opinion that it is just and equitable that the company should be wound up. On this ground the Court has merely to satisfy itself on the evidence that it is just and equitable to do so. And it is to be noted that the solvency of the company is not necessarily a material element Probably the most common case of the exercise of jurisdiction under this head is where the substratum of the company is gone. Thus if a company is formed to work a certain gold mine, and in process of time the mine gets worked out, or the company never acquires the mine at all, there is no necessity for keeping the company any longer in existence; and those interested in having the assets of the company properly administered may get a winding-up order from the Court upon the ground that it is just and equitable. Another instance is where the company has been conceived in fraud.

The Court having jurisdiction to wind up companies in England is the High Court, where the paid-up capital exceeds £10,000, but if under that amount, the County Court. In Scotland it is the Court of Session in either division, or in the event of a remit to a permanent Lord Ordinary, the Lord Ordinary during session, and in the time of vacation the Lord Ordinary on the bills.

An application to the Court for a winding-up order is by petition, and the winding-up is deemed to commence from the date of the presentation of the petition.

The Petition

The petition, after stating the name of the company and the address of its registered office and amount of its paid-up capital, proceeds to set out the ground or grounds upon which the order is claimed. The petition is supported by an affidavit to the effect that the statements in the petition are true. The petition is advertised in a London or local newspaper, according to circumstances, and in the *Gazette*, in order to allow persons in-

terested to come in and support or oppose the petition on the hearing. There may be more than one petition presented, but that first in order of time will have precedence. A petition may be presented by the company or a creditor (including a contingent or prospective creditor), or a contributory, and, when the company is already being voluntarily wound up, by the Official Receiver, or by all or any of those parties together. It is not usual for the company to petition, because if it is an advantage to wind up the company the shareholders can pass a resolution for a voluntary winding-up. The same remark applies to a petition presented by a contributory. And again, it is unusual where there is a voluntary winding-up for the Court to make a compulsory order at the instance of the Official Receiver or other person above-named, but it will do so if it is in the interest of creditors or contributories. A contributory cannot present a petition at all unless (1) the number of members is reduced below the minimum, or (2) unless the contributory had his shares originally allotted to him or has had them for at least six months during the eighteen months before the commencement of the winding-up, or through the death of a former holder. The object of this provision is to prevent a person purchasing shares for the purpose of wrecking the company.

The ground upon which a contributory usually succeeds on his petition is where the substratum of the company is gone. Mismanagement by the directors is not a good ground, as this can be cured by the company in general meeting. Only a shareholder can present a petition on the ground that the company has made default in filing the statutory report or in holding the statutory meeting. The Court may order the persons responsible for the default to pay the costs

In the case of a contingent or prospective creditor the petition cannot be heard at all until security for costs has been given and a prima facie case made for winding-up.

The most common case is where the creditor or creditors present the petition. If there is a debt the order should be made as a matter of course.

That the company has no assets, or that the assets are mortgaged to an amount equal to or in excess of these assets, is not a good ground for refusing to make the order. The Court may at any time have consideration of the wishes of the creditors or contributories, but the wishes of the latter will have little or no weight unless the company is solvent.

Once a petition has been presented, the company, creditor, or contributory may apply to the Court to stay any pending action that the company may be litigating. After a winding-up order has been made no action may be proceeded with or commenced against the company except with the leave of the Court.

Where a limited company brings an action at law, the Court may order it to give security for costs if it appears upon credible testimony that it will be unable to pay the defendant's costs of the proceedings in the event of the defence proving successful.

Security will be ordered almost as a matter of course if the company goes into liquidation by reason of its being unable to meet its debts as they become due. It sometimes happens that a company is solvent when it commences litigation, but goes into liquidation in the course of the litigation. In such a case the Court may order the company to give security.

A copy of the winding-up order must be forwarded to the Registrar of Companies.

Official Receiver's Report

When the winding-up order has been made by the Court the official receiver proceeds to submit a preliminary report to the Court This means that the affairs of the company are properly looked into, and is one of the advantages resulting from the winding-up by the Court. The official receiver is the same official who is attached to the Court for bankruptcy purposes, and if more than one, such one as the Board of Trade shall appoint. He prepares a report verified by affidavit, showing the assets, debts, and liabilities of the company, the amount of capital issued and paid up, and, if the company has failed, the cause of its failure, and whether or not, in his opinion, any further enquiry is necessary as to any matter relating to the promotion, formation, or failure of the company, or the conduct of the business. He may make a further report, if he thinks fit, as to whether there has been any fraud committed by any person in the formation of the company or by any director since the formation. The report in the first place is made up from a statement submitted by a director or other official of the company in office at the time of the winding-up order, or within one year from that date. The person preparing the statement is entitled to his costs and expenses. The statement must be verified by affidavit. Proper forms are prepared for making the statement. If the person responsible for the statement does not prepare it on being requested to do so by the official receiver he is liable to a fine, and also for a contempt of Court.

Liquidator

As soon as the winding-up order has been made, the official receiver summons a meeting of creditors

and a meeting of contributories of the company to determine whether or not a liquidator should be appointed by the Court in place of the official receiver, and whether a committee of inspection should be appointed, and who is to form that committee, to act with the liquidator. The Court, unless good reason is shown to the contrary, carries out the wishes of the meeting.

The Court, if occasion requires, may appoint a provisional liquidator at any time after the presentation of a petition. In England, the official receiver is liquidator until and unless the Court appoints a liquidator. More than one liquidator may be appointed if the interests of the parties concerned demand it. A liquidator may resign or be removed, and in England the official receiver would become liquidator during the vacancy. He can, of course, be removed on the ground of misconduct, or if there is any danger that he is likely to be biased in favour of any person or class. A liquidator must give security to the satisfaction of the Board of Trade in England, or in Scotland to the satisfaction of the Court. The Court settles his remuneration, which may be on a percentage basis or otherwise. He is described not by his own name but as liquidator of the particular company in respect of which he is appointed, or, if the official receiver, as the official receiver and liquidator thereof, or in Scotland or Ireland as official liquidator.

In a winding-up by the Court, the liquidator takes custody of, or under his control, all the property of the company, the official receiver being liquidator unless one is appointed by the Court; in Scotland the Court has custody of the property whenever there is no liquidator acting.

The liquidator in carrying out his office has wide powers, some of which he can only exercise with the sanction of the Court or of the committee of inspection so far as England is concerned.

Sanction is required to bring or defend any action or other legal proceeding in the name of the company; to carry on the business of the company, so far as may be necessary for the beneficial winding-up thereof; to employ a solicitor or other agent to do what the liquidator cannot do himself—the sanction must be obtained before the employment, except in cases of urgency.

In a winding-up by the Court, the liquidator can dispose of the real and personal property of the company by auction or otherwise; may do all acts and execute all deeds, receipts, and other documents in the name of the company, and for that purpose, when necessary, may use its seal; may claim in the bankruptcy of any contributory; may draw, accept, make, and endorse any bill of exchange or promissory note of the company; may raise any requisite money on the security of the assets, may take out in his official name letters of administration to any deceased contributory; and generally do all such things as may be necessary for winding up the affairs of the company and distributing its assets.

In England the exercise of any of these powers, whether the sanction of the Court is necessary or not, is always under the control of the Court, and any creditor or contributory may apply to the Court with respect to the exercise or proposed exercise of such powers.

The liquidator of a company which is being wound up by the Court in England pays the money received by him to the Companies' Liquidation Account at the Bank of England, unless the committee of inspection satisfies the Board of Trade that it is for the advantage of creditors or contributories that the liquidator should have an account with any other bank. The liquidator must not retain a sum exceeding £50 for more than ten days unless he satisfactorily explains the fact to the Board of Trade. Any default in this respect will make him liable to be charged interest at the rate of 20 per cent, with the disallowance of all or such part of his remuneration as the Board may think just, and he may be removed from his office. He must not pay any money into his private banking account.

The liquidator of a company being wound up by the Court in England must at least twice a year send an account to the Board of Trade of his receipts and payments The account is audited by the Board of Trade, and a copy of the audited account is kept by the Board and a copy filed with the Court, and is open to the inspection of every creditor or person interested. A copy is sent to every creditor and contributory.

The liquidator of a company which is being wound up by the Court must keep proper books in which minutes of the meetings are kept; every creditor or contributory may, subject to the control of the Court, personally, or by his agent, inspect such books.

When a liquidator of a company which is being wound up by the Court has completed the winding-up, he may apply to the Board of Trade for his release. Such release discharges him from all liability in respect of any act or default made by him in the administration of the affairs of the company, unless such release has been obtained by fraud or concealment of any material fact. Before granting the release, the Board of Trade considers any objection raised by a creditor, contributory, or person interested. If the Board withholds the release, then upon the application of any creditor, contributory, or person interested,

the Court may make such order as it thinks just, if necessary charging the liquidator.

The liquidator is under the inspection of the Board of Trade in the case of companies wound up by the Court in England, and if there is any complaint as to his conduct the Board may enquire into it and may direct a local investigation of his books and vouchers. If the occasion demand, the Board may apply to the Court to examine him or any other person on oath; the Board may then take such action as it thinks fit to meet the case.

The liquidator of a company which is being wound up by the Court in England must have regard to any wishes of the creditors or contributories, as expressed by resolution at any general meeting, or by the committee of inspection. In case of conflict, the directions of the former should prevail The liquidator may summon such meetings to ascertain their wishes, and it is his duty to do so at such times as they direct, or when requested to do so in writing by one-tenth in value of the creditors or contributories as the case may be. The liquidator may apply to the Court for directions in any particular matter, and any person aggrieved may apply to the Court to reverse or modify any act of the liquidator complained of.

Subject to the above, the liquidator may use his discretion in the management of the estate and its distribution among the creditors.

Committee of Inspection

The committee of inspection consists of both creditors and contributories, or their attorneys, in such proportions as may be agreed upon, or, in the case of difference, as may be determined by the Court. The committee meets as often as it thinks fit, but at least once a month; a meeting may be called by any member, or by the liquidator. It acts by the majority of members present, but the majority of the committtee must be present. A member may resign by written notice to the liquidator; his office becomes vacant if he becomes bankrupt or compounds or arranges with his creditors, or is absent from five consecutive meetings of the committee without leave of the members; he may be removed by an ordinary resolution of creditors, if he represents the creditors, or of contributories, if he represents contributories. The committee can act in spite of the vacancy. Upon a vacancy, the liquidator summons a meeting of creditors or contributories, as the case may be, to fill the vacancy. If there is no committee of inspection, the liquidator may apply for the sanction of the Board of Trade in lieu of the committee of inspection.

In England, where the official receiver acts as liquidator, he may, if necessary, apply to the Court to appoint a special manager who has all the powers of receiver and manager, and such other powers as may be entrusted to him by the Court, to manage the particular business for which he was appointed. The Court fixes his remuneration, and he gives security and accounts to the Board of Trade.

Where a company is being wound up and an application is made on behalf of the debenture holders to the Court to appoint a receiver, the official receiver may be appointed The Court will always permit debenture holders, as a matter of course, to proceed with their action to realize their security in spite of the fact that the company is being wound up by the Court.

The powers of the Court in the winding-up by the Court are divided into Ordinary powers and Extraordinary powers. The Ordinary powers of Court may be exercised, and in fact are exercised, by the liquidator appointed by the Court, and are as follows:—

(*a*) As soon as the winding-up order is made, the liquidator must settle the lists of contributories. He gives notice in writing of the time and place appointed for the settlement to every person whom he has placed upon the list. Any person aggrieved may appeal within twenty-one days to the Court, which will make an order to suit the case.

The liquidator makes an A list and a B list, the former containing the names of present members and the latter those who have been members within the past year. In each case the liquidator must distinguish between contributories in their own right and persons who are contributories as being representative of, or liable for the debts of, others.

(*b*) The liquidator may require any contributory, any trustee, receiver, banker, agent, or officer of the company, to hand over to him any money or other property of the company which may be in his hands.

(*c*) The liquidator may make calls upon the contributories by leave of the Court or with the sanction of the committee of inspection. He advertises the time and place of the intended meeting of the committee of inspection, and any contributory is entitled to be heard at such meeting or to send his complaint in writing. The liquidator gives notice to the contributories included in the call, and, if the amount due is not paid, the call can be enforced by the Court in a quick and easy method. The liquidator is entitled to make a call when he thinks it necessary, and he need not wait until an actual debt from the company is due.

(*d*) Creditors prove their debts by delivering or sending through the post an affidavit verifying the debt. The affidavit must give particulars of the debt and specify the vouchers by which it can be substantiated. A creditor must bear the cost of proving his debt, unless otherwise ordered by the Court. He must deduct all trade discounts which he may have agreed to allow for payment in cash. When any rent or other payments fall due at stated intervals, he may prove for the proportionate part due at the date of the winding-up. But as far as the landlord of premises demised to the company is concerned, rent can be claimed if the liquidator or company continues in occupation. A creditor may include in his proof interest on any debt due not exceeding 4 per cent, providing he claims by virtue of a written instrument, whereby the debt is due at a time certain with interest therefrom, or where he has given notice in writing that interest will be claimed from date of demand for payment. Creditors may prove for future debts and be paid with present creditors, subject, however, to a rebate of interest at 5 per cent. Where a number of workmen are proving in respect of their several wages, all the claims may be proved by their foreman or some other person on their behalf. Notice is given by the liquidator to the creditors to prove their debts by advertisement, and to every person mentioned in the Statement of Affairs as a creditor. The liquidator examines every proof lodged with him, and may require further evidence to be given in support of it. He may reject the whole or part of it, in which case he must state in writing his reasons for so doing. The aggrieved creditor may appeal to the Court against such rejection, but notice of the application must be given within twenty-one days from the service of notice of rejection. The liquidator must deal with every proof lodged with him, and must give notice in writing within twenty-one days that he admits or rejects the proof, save that where he has given notice of his intention to declare a dividend, he must deal with all proofs lodged within fourteen days after the date mentioned in such notice as being the last day on which proofs will be admitted.

(*e*) The liquidator must collect the assets of the company and apply them in discharge of its liabilities. When the liquidator is in a position to declare a dividend, he gives notice to the Board of Trade, in order that the same may be gazetted, not more than two months before declaring the dividend. He also gives notice at the same time to those creditors mentioned in the Statement of Affairs who have not proved their debts. Such notice must specify the latest date, being not less than fourteen days, within which they must prove. Any creditor who lodges his proof after such notice may appeal within seven days against the decision of the liquidator. Immediately after the expiration of this period the liquidator may declare a dividend and give notice to the Board of Trade; he also sends a notice to each creditor whose proof has been admitted. When all creditors have been paid in full, the surplus assets are distributed amongst those entitled in accordance with their respective rights.

If the assets prove insufficient to satisfy liabilities, the Court may order that the costs, charges, and expenses incurred in the winding-up may be paid in such order of priority as the Court thinks just.

The Court's extraordinary powers are as follows:—

The Court can summon and examine on oath any person suspected to have in his possession any property of, or who is indebted to, the company, or who can throw any light upon its affairs. If such person fail to attend, after reasonable expenses have been tendered to him, he may be apprehended and brought to the Court. Similarly, the Court has power to summon any person who has in his custody any documents or books of the company, even though that person may have a lien upon the papers.

Public Examination of Directors, &c.

Where the official receiver in England makes a further report to the effect that, in his opinion, fraud has been committed by any person responsible or interested in the formation of the company, or by a director or officer of the company, the Court may summon such person to attend to undergo a public examination on oath. Upon the conclusion of the examination, the notes of the evidence of the person examined are read over to him and signed by him, and may be used in evidence against him. These notes are of great use if either civil or criminal proceedings are commenced against him.

The Court may arrest any contributory who is suspected of being about to quit the United Kingdom or otherwise absconding, or of removing or concealing his property with the intention of avoiding payment of calls that may be due from him. The Court may further seize his property, including his papers and books, and may deal both with him and his property as it thinks fit.

Orders made by the Court may for the most part be appealed against to a higher Court, as in the case of other judicial proceedings. Orders, interlocutories, and decrees made in a winding-

up are enforceable all over the United Kingdom.

Voluntary Winding-up

A company may be wound up voluntarily in three events: (1) When the period provided by the Articles of Association for dissolution has arrived and the company in general meeting passes a resolution to wind up. (2) If the company passes a special resolution to wind up voluntarily. (3) If the company resolves by extraordinary resolution that it cannot, by reason of its liabilities, continue its business, and that it is advisable to wind up. The commencement of the winding-up dates from the passing of the resolution The company does not thereby cease its corporate existence, although it ceases to carry on business except for the purpose of winding up its affairs. Notice of the special or extraordinary resolution to wind up must be advertised in the *Gazette*. Thereupon the property of the company must be applied in satisfaction of its liabilities, and subject thereto must be distributed among its members in accordance with their respective rights. For this purpose a company in general meeting appoints one or more liquidators, and the directors thereupon cease to act except in so far as the meeting or the liquidator enjoins otherwise. The liquidator has very wide powers, and can exercise without the sanction of the Court all the powers given to the liquidator in a winding-up by the Court; he settles the list of contributories, makes calls, pays debts of the company, and adjusts the rights of the creditors amongst themselves. The Court may remove a liquidator upon cause being shown, and appoint another in his place. The liquidator must give notice of his appointment to the Board of Trade

The liquidator must call a meeting of creditors within seven days, and also advertise the date of the meeting in the *Gazette* and at least two local newspapers. At the meeting, the creditors may determine whether they shall apply to the Court to appoint a liquidator in his place or to act jointly with him, or for the appointment of a committee of inspection. The Court, upon application, may make such order as it thinks fit in the interests of the creditors and contributories.

If a vacancy occurs in the office of liquidator, from any cause whatsoever, the company may in general meeting appoint his successor. The company may delegate the power of appointing a liquidator to its creditors or a committee of them.

The liquidator may summon general meetings of the company to obtain its sanction, and, if the liquidation continues for over a year, must call a meeting at the end of each succeeding year, placing before it an account of his acts and dealings during the year.

The costs, charges, and expenses incurred in the winding-up, including the remuneration of the liquidator, if any, are payable out of the assets of the company in priority to all other claims.

Reconstruction

A company very frequently winds up voluntarily when its real object is to obtain fresh capital. The means adopted is for the company to sell all its assets to a new company in exchange for partly paid shares, the two companies being in law entirely different entities. This is known as liquidation for the purpose of reconstruction. The partly paid shares are distributed amongst the shareholders in the old company *pro rata* to their respective holdings in the old company. The new company has all the assets of the old company, but it has this material advantage over the old company, that it can now obtain fresh capital by making a call upon the partly paid shares. A shareholder in the old company, who did not vote in favour of the special resolution, cannot be compelled to take the partly-paid shares in the new company in exchange for his original holding; by giving notice in writing of his dissent, he may require the liquidator to abstain from carrying the resolution into effect unless his interest is purchased at a price arrived at by agreement or by arbitration in the manner specified by the Act.

In a voluntary winding-up, the liquidator, or any creditor or contributory, may apply to the Court to determine any question, and the Court may exercise all the powers which it might exercise if the company were being wound up by the Court.

When the affairs of the company are fully wound up, the liquidator prepares an account to be laid before the final meeting of the company, the holding of the meeting being advertised in the *Gazette*. He then makes a return to the registrar of the holding of the meeting, and three months from that date the company is dissolved; the Court, upon the application of a person interested, may defer the date of the dissolution until such time as the Court thinks fit.

The winding-up of the company voluntarily does not affect the right of any creditor or contributory to have the company wound up by the Court, if the Court is of opinion that the rights of the creditors, in the case of an application by a creditor, or that the rights of the contributories, in the case of an application by a contributory, will be prejudiced by the voluntary winding-up. If in

such circumstances the Court makes an order, it may provide for the adoption of all or any of the proceedings in the voluntary winding-up.

Winding-up Subject to the Supervision of the Court

When a company has resolved to wind up voluntarily, the Court may, but is not usually asked to, make an order to wind up under the supervision of the Court. Application is made by petition as in the case of a winding-up by the Court. The Court may appoint an additional liquidator, who has precisely the same powers as if he had been appointed by the company. The liquidator, save as to restrictions, if any, imposed upon him by the Court, may exercise all his powers without the sanction or intervention of the Court, just as if the company were being wound up voluntarily.

An order for a winding-up subject to supervision is for all purposes to be deemed an order for winding-up by the Court, save for certain important exceptions, viz. the statement of the company's affairs by the official receiver; the report of the official receiver; the description of a liquidator; the exercise of powers of a liquidator under the sanction of the Court; the meetings of creditors and contributories, summoned by an official receiver; the payment of moneys by the liquidator into the Companies Liquidation Account of the Bank of England; the audit of the liquidator's accounts by the Board of Trade; the release of liquidators by the Board of Trade; the control of the Board of Trade over liquidators; the committee of inspection; the settlement of the list of contributories by the Court.

In a voluntary winding-up there can be no transfers of shares, except with the sanction of the liquidator; in a winding-up subject to supervision, the sanction of the Court is required.

Secured Creditors

In many respects the procedure in winding up is much the same as in bankruptcy, as, for example, in the proof of debts; indeed the bankruptcy rules apply to companies being wound up in England and Ireland as regards the respective rights of secured and unsecured creditors. In Scotland, the rights of creditors as to ranking for payment of dividends are similarly governed. And again, a fraudulent preference as understood in Bankruptcy Law applies equally to the winding-up of a company, the presenting of the petition, or the resolution for winding-up being substituted for the Act of Bankruptcy. (See Chapter XI of this Part.)

Preferential Payments

The following debts have priority to all other claims, and must be paid forthwith by the liquidator so far as the assets permit, after he has retained sufficient to cover the expenses of the liquidation: (*a*) Parochial or other local rates, (*b*) wages of a clerk during four months before the date hereafter defined, not exceeding £50, (*c*) the wages of a workman or labourer, not exceeding £25 during two months before the said date, (*d*) all sums due under the Workmen's Compensation Act, unless the company is being wound up voluntarily for the purpose of reconstruction. These debts should all be paid in full if possible, and if not they must suffer equally. In the case of a company registered in England or Ireland, they have priority over the claims of holders of debentures under a floating charge. They constitute a first charge upon goods or the proceeds of goods distrained on by a landlord within three months next before the said date, the landlord, in respect of any money paid under such charge, having the same rights of priority as the person to whom the payment is made.

The date referred to in the above passage, in the case of a company wound up compulsorily (and not being previously wound up voluntarily), is the date of the winding-up order; in other cases the date is the commencement of the winding-up

In England or Ireland, where a company is wound up by or under the supervision of the Court, any attachment, sequestration, distress, or execution put in force against the property of the company after the commencement of the winding-up is void. Similar provisions apply to Scotland.

A floating charge created within three months prior to the commencement of the winding-up is invalid, except to the actual amount of cash paid to the company, unless it is proved that the company was solvent at the time when the charge was created.

Liability of Promoters, Directors, &c.

In a winding-up, the Court has very wide powers to assess damages against any person who has taken part in the formation or promotion of the company, or any present or past director or manager or liquidator or other officer of the company who has misapplied or retained money or property of the company or been guilty of any misfeasance or breach of trust in connection with the affairs of the company. The winding-up of a company affords an excellent opportunity of discovering the misdeeds of its officers. Any person interested, for example the official receiver, liquidator, creditor, or contributory, may apply to the Court to look

into the matter and examine the person accused; if the Court is satisfied that there has been any delinquency, the Court may compel the party responsible to reimburse the company, and this even though the delinquency amounts to a criminal offence. As far as Scotland is concerned these observations do not apply to promoters or to any property of the company other than money.

If in a winding-up by, or subject to the supervision of, the Court, it appears to the Court that any of the above-mentioned persons have been guilty of a criminal offence, it may, upon the application of any person interested or on its own motion, direct the liquidator to prosecute for the offence. In the case of a voluntary winding-up, the liquidator may, with the sanction of the Court, prosecute any such person.

When a company is about to be dissolved, the Court may direct what is to be done with books and papers where the company is being wound up by or subject to the supervision of the Court; in the case of a voluntary winding-up, the direction is given by the company by an extraordinary resolution. After five years from the dissolution no person can be held responsible for the custody of such documents.

Although the company has been dissolved, the Court may, within two years, declare the dissolution to be void, whereupon all such proceedings may be taken as might have been taken if the company had not been dissolved.

Where a company is being wound up in England, if the winding-up is not concluded within one year, the liquidator must send to the Registrar of Companies a statement in a prescribed form, showing the position of the affairs of the company. Only creditors and contributories are entited to inspect this statement, and it is a contempt of Court falsely to personate a creditor or contributory. In these cases, whenever a liquidator has had assets in his hands for a period exceeding six months after date of receipt, which have been unclaimed or undistributed, he must forthwith pay the same into the Companies Liquidation Account of the Bank of England.

Removal of Moribund Company from Register

In certain cases companies may be struck off the Register although there has been no formal dissolution. Thus, where the Registrar of Companies has reason to believe that a company is not carrying on business or in operation, he may send a letter enquiring if such be the case, followed by a registered letter to the same effect a month later, followed finally by a publication in the *Gazette*, that after three months, unless cause is shown to the contrary, the company will be struck out.

Where the Registrar has reason to believe that no liquidator is acting in a winding-up, or that the affairs of the company are fully wound up and no returns have been made by the liquidator for six months after a demand has been made by the Registrar, the Registrar may publish a notice in the *Gazette* similar to the above. The liability of every director, managing officer, and member of the company, however, continues, and may be enforced as if the company had not been dissolved.

Any person aggrieved by the company having been struck off the Register may apply to the Court, and the Court, if it thinks that the ends of justice will be met by so doing, may order the name of the company to be restored to the Register.

COMPANIES ESTABLISHED OUTSIDE THE UNITED KINGDOM

In order to avoid the stringent provisions and the publicity which attended the formation of a company in the United Kingdom, it was the habit at one time for promoters for whom publicity had no attraction to register the companies in which they were interested in countries outside of the jurisdiction of the Courts of the United Kingdom, although the shares were issued and intended to be issued only to members of the British public, and although the business was to be carried on in Great Britain, or controlled from Great Britain. This device, however, has been defeated, since 1907, to a certain extent. Every company which carries on business in the United Kingdom must file with the Registrar of Companies particulars concerning the company somewhat similar to those required from companies registered in the United Kingdom. Thus, such a company must file a copy of the instrument which defines its constitution similar to the Memorandum of Association in British companies. If the instrument is in a foreign language a certified translation must be filed. A list of the directors of the company must be filed, together with the names and addresses of one or more persons resident in the United Kingdom, authorized on behalf of the company to accept service of process and any notices required to be served on the company. The company must further file every year a statement in the form of a balance sheet. If it uses the word "limited" as part of its name, it must exhibit conspicuously in every place where it carries on busi-

ness, not only the name of the company, but the country in which it is in fact registered; the same applies to all letter paper, notices, advertisements, and other official publications of the company; and to every prospectus which it issues inviting subscriptions for shares.

CRIMINAL LIABILITY

It will have been observed that in various cases officials are required to make and file returns and statements of one kind or the other. In every case a penalty is attached for not making the requisite return, and if the return is false in any material particular, to the knowledge and intention of the person making it, he is guilty of a criminal offence, and is liable, on conviction on indictment, to imprisonment for a term not exceeding two years, or upon summary conviction for a term not exceeding four months with or without hard labour, in either case, with or without the option of a fine.

COMPANY LAWS IN THE BRITISH EMPIRE

The Company Laws in India and the various self-governing colonies of the British Empire are for the most part based upon the Imperial legislation, in one or two cases, as in India, the law being almost identical. But although in the main outline the laws are the same, in detail there exist many distinctions, and no useful purpose from a business point of view would be gained by going into such distinctions. It would no doubt be of considerable utility to the commercial world if the Company Laws in the British Empire were brought more into line. There is no reason why this should not be effected; the question was before the Imperial Conference. It would always be open for a Colony to keep alive enactments which might be peculiarly suitable for that Colony. No doubt the "non-liability" companies, for example, are useful in mining districts, although of little use in this country. A "non-liability" company is one in which the shareholders are not liable to be sued for the calls unpaid on their shares. Under some laws, if such calls be not paid, the shares can be sold, under other laws no dividend is paid on the shares until the call is paid. It is to be hoped that the consolidation of the Company Laws by the Imperial Parliament will be the stepping-stone to a uniformity throughout the Empire. So long as the Company Law in the United Kingdom was embodied in eighteen statutes little could be hoped for, as the Colonies had much ado to keep pace with the amendments. In 1907 a Blue Book (Cd. 3589) was laid before the Houses of Parliament giving a comparative analysis of the Company Laws of the United Kingdom, India, Canada, Australia, New Zealand, and South Africa. For business purposes it is of no use, but it clearly tabulates the divergencies of the various statutes.

B. Local Government Corporations

Central Authority—England and Wales—Poor-Law Authorities—Education Authorities—London Government—Scotland—Ireland—Exercise of Powers by Local Authorities

A large amount of business is transacted throughout the country by corporations which are not in the strict sense trading, although in the interests of the various purposes of local government these corporations, throughout England and Wales, Scotland and Ireland, have to enter into contracts in the exercise of their increasing powers. It will be necessary to deal separately with England and Wales, Scotland and Ireland, although the Irish system approximates to the English; while London defies all attempts to bring its varied systems within any general treatment of English local government. There are, however, certain broad rules of law which govern the constitution, procedure, and exercise of powers by all local government bodies.

CENTRAL AUTHORITY

While there is in the United Kingdom the largest devolution of self-governing powers upon local authorities that has been known in any country, there is, at the same time, a growing tendency to extend that central control which has long been exercised by Government Departments having supreme oversight in these matters. Before entering upon the subject of local government bodies themselves, it may be well to give a brief outline of that central authority which, since 1871, in England, has been known as the Local Government Board; while similar control is provided for Scotland and Ireland.

The Board, although technically comprising leading members of the Government, really consists of a President, who is always a Cabinet Minister, a Parliamentary Secretary, Permanent Secretary, and five Assistant Secretaries. The Board never meets, and all acts are done in the name of these chiefs. The duties of the Board are of a supervising, consultative, and sanctioning character, while for the greater number of local authorities it also provides the audit. Its powers of supervision compel the effective discharge of the laws relating to public health. Its sanction is required in the case of nearly all loans raised by almost any local authority The central authority also has important duties in connection with the examination of private bills promoted in Parliament by local authorities, in the granting of Provisional Orders enabling local authorities to assume additional powers, and for grouping the areas and for enhancing the status of particular local authorities. The Board is not only the official authority on many points of appeal, but it is constantly giving advice and direction in regard to the duties of local authorities. In respect to the Poor Law the Board exercises its largest powers, and by means of General Orders has prescribed the duties of Poor Law Guardians and officers. Its inspectors are constantly employed in seeing that poor-law authorities discharge their duties, and the Board's consent is required to the engagement and discharge of the officers of such authorities. The Local Government Board presents an annual Report to Parliament, and is answerable to Parliament through its President and Parliamentary Secretary.

ENGLAND AND WALES

Outside London, England and Wales presents a system of local government which begins with the parish as the unit, and, with the somewhat anomalous though most important exception of municipal and county boroughs, is built up on county districts and county administration. Each of these divisions has its council exercising authority, which may be independent, or in some cases dependent on the larger authority within the county area. Women are not now disqualified for seats on councils.

The Parish

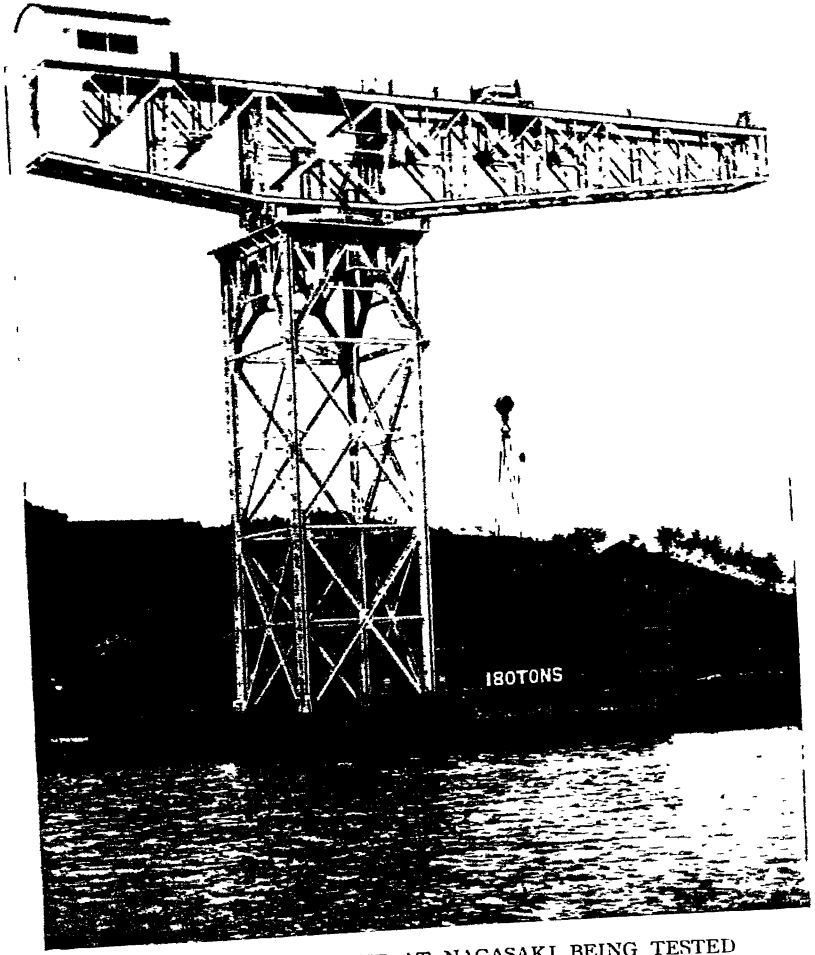
The Parish Council or the Parish Meeting is the local government authority for the rural parish. Every rural parish with a population of three hundred or more has a Parish Council and a Parish Meeting; smaller parishes have a Parish Meeting and may have a Parish Council. The parochial electors constitute the former and elect the latter from such electors, or residents in the parish for twelve months.

The Parish Council, where it exists, is the executive authority. It exercises certain minor powers, limited by an expenditure of a 3*d.* rate, or, with the consent of the Parish Meeting, a 6*d.* rate. Certain additional powers in connection with lighting and watching, baths and washhouses, burial, public improvement, libraries, allotments, &c., may be undertaken by Parish Councils by adopting the statutes in relation to them. The 6*d* limit may then be exceeded.

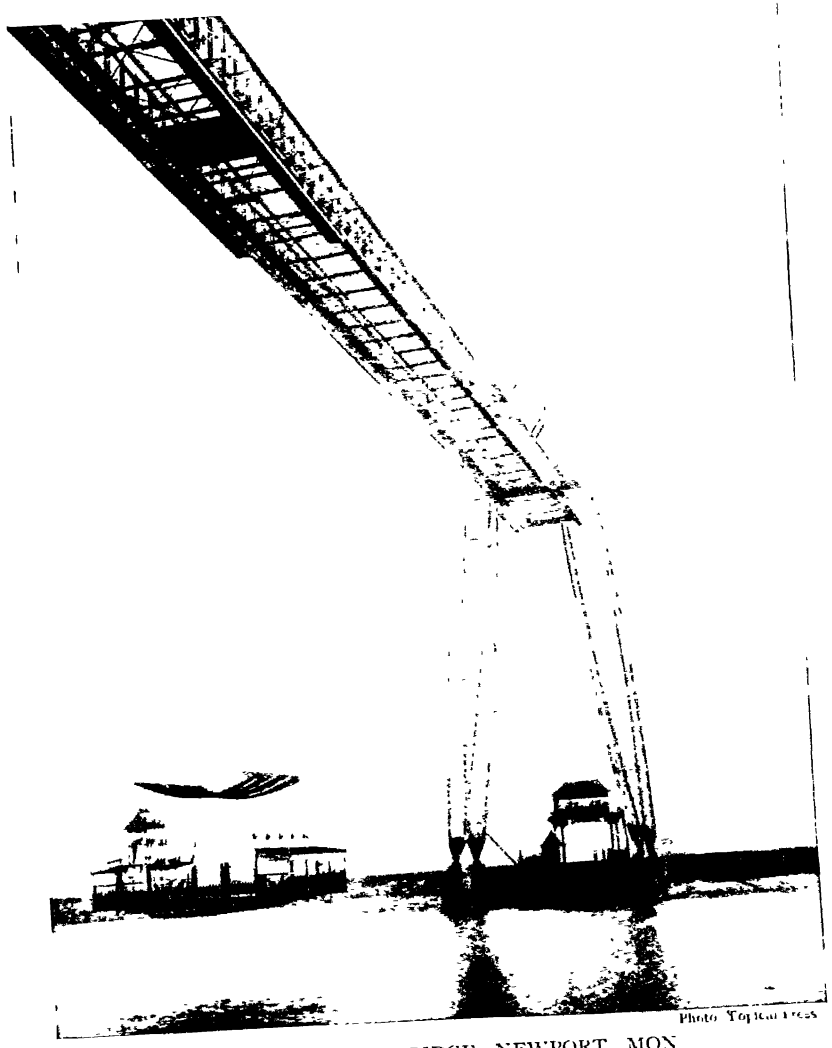
The ecclesiastical functions formerly discharged by vestries and churchwardens were not conferred upon Parish Councils, which have, however, the control of parish charities and footpaths, the appointment of overseers and assistant-overseers, and many other duties, as well as the power of making representations to superior authorities.

A Parish Council may make complaint or representation as to unhealthy dwellings or obstructive buildings to the district council; exercise powers over village greens and open spaces, public wells, streams, &c.; acquire rights of way and hold property for the benefit of the inhabitants. The Parish Council may also make complaint to the County Council of failure on the part of a district council in respect of its sanitary and highway duties in regard to a parish.

A Parish Council consists of a chairman and councillors, the number being fixed by the County



150-TON GIANT CRANE AT NAGASAKI BEING TESTED TO 30 TONS BEYOND ITS SPECIFIED CAPACITY



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Council—not less than five nor more than fifteen, elected annually. One of their number may be appointed clerk or treasurer without remuneration, but it is more usual for the assistant overseer or rate-collector or other person for small salary to act. The Council may appoint committees—but the acts of such committees must be approved by the Council—and may concur in the appointment of joint committees with any other parish. A Parish Council is financed out of the income of any parish property, and the poor rate to the extent of its powers of expenditure. The amount is raised by precept on the overseers who collect the poor rate.

A Parish Council enters into contracts under the hands, and, if necessary, the seals, of the presiding chairman and two other members.

County Districts, Urban and Rural

County districts comprise those local government areas in the county which are not comprised within the bounds of a municipal borough. In rural districts, as we have seen, some local-government powers are discharged by the Parish Council; others are conferred upon the rural district council. In towns and populous places, other than boroughs, there is an urban district council, and in urban districts and boroughs there is no Parish Council. Within a borough the Council exercises all the powers of an urban district council, with powers which are derived from charter or otherwise in addition.

Urban and rural district councils were set up in 1894, before which time heterogeneous bodies known as Local Boards of Health, Improvement Commissioners, &c., exercised local government powers in urban areas, while in rural districts the Board of Guardians was also the local government authority.

Urban and rural district councils are now very similar in their constitution, but upon urban councils larger powers are conferred, although in special circumstances "urban powers" may be conferred by the Local Government Board on rural councils. Every district council is a body corporate, with perpetual succession and a common seal. It may therefore sue and be sued in its own name and hold land. New county districts may be created or an alteration in existing boundaries effected by order of the County Council, confirmed by the Local Government Board.

In connection with the Public Health statutes councils own and maintain sewers, and are the sanitary authorities for the district. Urban councils may also under these or adoptive acts or other legislation supply water, gas, and electricity, run tramways, control markets, hospitals, libraries, parks, baths, &c., and engage in many undertakings—which has sometimes been called "municipal trading". (See p 194.) A district council (urban or rural) is the highway authority for the district, except as regards main roads and county bridges which the County Council maintain either directly or through the district council. A district council is the licensing authority in respect of pawnbrokers, dealers in game, gang-masters, passage brokers, knackers' yards, and the authority for the execution of the Acts relating to petroleum and infant-life protection. It may make by-laws to enforce good government and sanitary provision. Urban districts of more than 25,000 population may have a stipendiary magistrate; where of more than 20,000 inhabitants the Council may be the elementary education authority, and in any case can co-operate with the County Council in regard to education other than elementary.

An urban district councillor must be a parochial elector, or have resided in the district during the preceding twelve months. Councillors are elected every three years, one-third of the council generally retiring annually. A district may or may not be divided into wards The ordinary expenses are provided for out of the general district rate.

A rural district council is made up of representatives from the various parishes comprising the district. A rural district councillor must be a parochial elector of some parish in the Union (see p. 184), or have resided in the Union for the twelve months preceding the election. The rural district is that portion of the Poor Law Union which is outside any urban district or borough; and rural district councillors also act as Guardians for the rural portion of the Union.

Rural councils have special duties in regard to the protection of public rights of way, wastes and commons, and compelling efficient water supply to houses. The expenses of a rural district council are divided into general and special. The general expenses are raised by a levy chargeable on the district as a whole; special expenses are charged on the parish or contributory place which has been particularly benefited by the outlay.

Certain expenses may be charged by all local authorities upon persons benefited, as private improvement rates.

The officers of an urban district council are the clerk, the surveyor, the medical officer, the sanitary inspector, and other officials as may be required in accordance with the ordinary and special undertakings of the council. A rural district council has similar officers, while the clerk may also be clerk to the Board of Guardians.

The population of and extent of urban and rural districts varies considerably; for example, the population of Willesden Urban District is over 150,000, with a rateable value of nearly £900,000, while the urban district of Childwall, Lancashire, has only a population of about 220, and a rateable value of just over £4000. There is a tendency for large urban districts to apply to the Crown for charters of incorporation, by petition to the Privy Council.

Municipal Boroughs

The most important local government area is the borough, governed by a municipal corporation. A municipal corporation enjoys power and dignity greater than those of any other local government body, having a status superior to that of an urban district council and in certain cases functions co-extensive with those of a County Council, and an independence as regards central control and audit of accounts which even a County Council does not possess.

Through charters, in many cases some centuries old, boroughs may possess powers and revenues and peculiar privileges which are unknown to recent statutory bodies. They have also in their governing authority—the mayor, aldermen, and councillors, and sometimes other officials—a dignity which other bodies lack and sometimes envy. But the dignity of incorporation has been capriciously obtained—it is often possessed by very small places and is denied to other populous and important areas.

At one time municipal corporations depended upon charters and varying statutes, but, with the exception of the City of London and the ancient and curious little borough of Winchelsea, all the boroughs in the kingdom are reformed, and are now governed by the Municipal Corporations Act of 1882, supplemented in many cases by local acts. A municipal corporation, or town council as it is more colloquially called, is also the public health authority with the powers of an urban district council, and, if of over 10,000 inhabitants, it may be also the local elementary education authority.

The Council consists of the mayor, aldermen, and councillors, the number depending upon local conditions. Boroughs are generally divided into wards, a certain number of councillors being elected by the burgesses, and a certain number of aldermen being elected by the councillors. The boundaries of a borough may be enlarged and the numbers of the Council increased by order of the Local Government Board.

Councillors are elected for three years, one-third retiring each year; aldermen for six years. The mayor is elected annually by the Council on the 9th November. He need not be a member of the Council, but he must be qualified to be a member. He is the chief magistrate for the borough, if there is a separate borough bench, presiding over the borough justices as well as over the town council. He is also a Justice of the Peace for the county for the year of office, while he remains a Justice of the Peace for the borough for the year after office. The aldermen are not necessarily chosen from the councillors, but they must be qualified to be councillors In practice they are generally elected by seniority from amongst the councillors. One-half retire from office at the end of every three years. Councillors are elected by the burgesses. They must be burgesses themselves, or qualified to be but for residence outside the seven miles limit. They must, however, reside not more than fifteen miles from the borough.

Burgesses are those of full age who have resided in or within seven miles of the borough during the twelve months preceding the 15th July, and are rated for the poor rate, and have actually paid the poor and borough rates which have become due. The qualification is the occupation of any building or of land of the annual value of £10

The officials of a Municipal Corporation are the town clerk, borough treasurer, borough surveyor, medical officer of health, inspector of nuisances, and such other officers as may be necessary, generally including sanitary inspector, superintendent of gas or waterworks or other undertaking of the Council, rate collectors, and other officials.

There are several classes of boroughs: certain boroughs are cities, and appoint their own sheriffs. A county borough must have a population of more than 50,000, and the council of a county borough has most of the powers of a county council as well as those of a town council. In such a case the council of the surrounding county has no authority within the borough, which is an independent entity, with the possible exception of making a contribution towards the cost of county assizes. Boroughs, without being county boroughs, may have a separate Court of Quarter Sessions, with a recorder appointed by the Crown, and a clerk of the peace. Another class of borough has a separate Commission of the Peace without its own Quarter Sessions, and may maintain its own police force; but boroughs with less than 10,000 inhabitants which have acquired the right of a separate Court of Quarter Sessions or a separate Commission of the Peace are now encouraged to abandon these and fall within the administration of the county. Certain boroughs have, in addition to courts of criminal jurisdiction, ancient courts where civil actions are tried, as the Liverpool Court of Passage, the Salford Hundred

Court of Record. On certain boroughs, outside London, the civic dignity of a Lord Mayor has been conferred, viz. Birmingham, Bradford, Bristol, Cardiff, Leeds, Liverpool, Manchester, Norwich, Newcastle-on-Tyne, Sheffield, York.

A Town Council must hold at least four quarterly meetings in each year; other meetings are generally held each month, or more often as occasion may arise. The mayor, or, on his refusal, any five councillors, may summon a meeting at three clear days' notice. A quorum is composed of one-third of the members. In the absence of the mayor, the Council elects a chairman of the meeting. On an equality of votes the chairman has a casting vote. The business of the Council is carried out generally by means of committees. The Watch Committee is in some respects independent of the Council, and controls the police force. Other committees are usually constituted to take charge of various aspects of the ordinary work and the special undertakings of the Council. The expenses of a borough are paid primarily out of the borough fund, which consists of the income derived from corporate land or other property, fines and penalties, and market dues. This fund is not sufficient, however, and consequently a rate is levied, known as the borough rate, for the purposes of the Council acting as the municipal corporation. As the sanitary authority, the Council also levies a general district rate, and there may be special rates levied for special purposes authorized by Act of Parliament, e.g. library rate, as there may be special income from municipal undertakings (see Part I, Chapter VIII). The accounts of a town council and urban sanitary authority are subject only to audit by elective auditors, and are not required to be in any particular form, being made up half-yearly.

The ordinary duties of municipal corporations comprise the purchase and holding of land for a town hall, municipal buildings, police station, sessions house, &c., not exceeding five acres, and of other land as sanctioned by the Local Government Board, and the general duties of a sanitary authority. But beyond this, Councils engage in a great number of undertakings for which land is required, and a revenue and officials specially needed.

Counties

The Local Government Act of 1888 set up County Councils in all administrative counties in England and Wales, transferred to these Councils the jurisdiction of Quarter Sessions in regard to local government, and conferred additional powers upon them. Certain boroughs, as we have seen, have also an independent county administration of their own.

The County Council consists of the chairman, aldermen, and councillors, being closely modelled upon a municipal corporation. The chairman is elected by the Council for the year, and is a Justice of the Peace for the county. Aldermen are elected by the councillors, and councillors by the electors, who consist of those on the municipal register. The number of councillors for each county and the electoral divisions are fixed, and may be varied by, the Local Government Board. Councillors are elected every three years, and retire in a body

Later legislation has enlarged the powers of County Councils considerably, and they have in many cases a right of compelling subordinate councils to carry out their duties, or of discharging the duties themselves. The Council also, in conjunction with the justices of the county, appoints a joint standing committee to control the police.

County Councils were made authorities for elementary education under the Act of 1902 (see p. 187), acting through the Education Committee They had always been the authority for technical and higher education.

The revenue of the county is paid into the county fund, which is augmented by county rates, ultimately collected by the overseers of each parish together with the poor rate. Councils have borrowing powers exercisable with the consent of the Local Government Board. The Council receives a large amount of money out of the local taxation account through licences, and other money voted from national sources, in some cases to be passed on by the county authority to the district authority. A Council must make an estimate of receipts and expenditure at the commencement of each financial year. Payments are made by an order on the county treasurer, signed by three members of the finance committee and countersigned by the clerk. The accounts must be in the order prescribed by the Local Government Board, and the audit is an annual one made by the district auditor.

The officials of a County Council are the clerk—who is also clerk of the peace—the county treasurer, county surveyor, public analyst, and other officials necessary for carrying out the various duties, as well as clerks and other servants. The Council also appoints the coroner for life, and may appoint medical officers of health. The Council is the authority for all main roads and bridges in the county.

The Councils of counties and boroughs and urban districts of 20,000 population are the autho-

rities for administering the Old Age Pensions Act Committees are formed, and the duties may be devolved on local sub-committees. The Local Government Board is the controlling authority, and appoints the pension officers. Pensions are actually paid through the Post Office.

POOR-LAW AUTHORITIES

The Poor Relief Act of 1601, the celebrated Act of Elizabeth, is the real commencement of the present system. That Act, supplemented by others, continued in force till 1834, when the scandals arising from its abuse necessitated a drastic change. Especially was this so in agricultural districts, where able-bodied persons were practically living out of the rates all their lives

Before the Act of 1834 (or at any rate before one of 1782) each parish had been obliged to provide for its own poor. But since then a Union of parishes, or a separate parish only if large enough, has been the Poor-Law area. Subsequently the expense also was distributed over the same area and raised by a common fund. For each Union a Board of Guardians was established as the Poor-Law authority, and there have since been provided facilities for constituting fresh Unions, and dissolving or combining Unions, for more efficient administration. The Unions vary very considerably in size and population, and a new phase of Poor-Law administration began with the Report of the Royal Commission, issued in 1909.

The Central Board as a controlling power over all the local Poor-Law authorities of the country is now, with larger powers than ever, merged in the Local Government Board.

The Guardians of the Poor

Boards of Guardians, before they became general, had been constituted in certain places under local Acts of Parliament; there are still some Guardians under local acts. They replaced the old system under which the overseers of the poor had been the relieving officers. The latter have in certain cases of urgency the right to grant relief in kind, as a magistrate may on refusal of the overseer, but the ordinary duties of overseers are the levying and collection of the poor rate.

The duties of Boards of Guardians include some extra-Poor-Law matters; but may be summarized as: (1) the administration of the Poor Law, (2) the preparation through the Assessment Committee of the Valuation List on which the poor rate is assessed, (3) the Registration of Births and Deaths, and (4) the carrying out of the Laws relating to Vaccination.

Speaking of the Poor-Law duties proper, they are divided as regards indoor and outdoor relief, the former being largely connected with the management of the Union Workhouse. In connection with indoor relief, besides the workhouse, there may be an infirmary and dispensary; and provision must be made for the education of Poor-Law children, and the care of lunatics and imbeciles. Under outdoor relief, which can only be given in accordance with statute or the Order of the Local Government Board, and may be in money or in kind, many other matters have to be considered, such as medical attendance, district nursing, the boarding-out of children, and the emigration of children and sometimes adults.

The Election of Guardians

Since 1894 Boards of Guardians have been popularly elected in a way similar to other local government bodies. The number of members may be fixed or altered by the County Council. The qualifications resemble those attaching to other such public offices. Women, however, have always been eligible. In rural districts Guardians are actually elected as rural district councillors and sit on both bodies, meeting the members specially elected by urban districts at the Board of Guardians.

Besides the usual disqualifications for election, a penalty of £20 is incurred by any guardian who acts while disqualified. All Guardians, with the possible exception of the chairman and vice-chairman, who may be co-opted, are now directly elected. Resignation can only be with the consent of the Local Government Board for good cause shown.

Central Control

The control of the Local Government Board over Boards of Guardians is exercised in a variety of ways. The Board by General Orders lays down the rules of procedure and makes Special Orders in particular matters. Its consent is required to the appointment or discharge of every Poor-Law officer. The Board can be called in by any ratepayer who wishes to question the action of the Guardians, and may itself order the discharge of many of the duties should the Guardians fail in that respect. Finally, by a most searching audit, a very careful watch is kept over every item of expenditure.

Meetings of the Guardians

The meetings of the Board are held under the same regulations as those of District Councils. The annual meeting is held as soon after April 15 as possible. The chairman, vice-chairman, and committees are then elected. The ordinary business is transacted at monthly or fortnightly meetings, to all of which the public may be admitted, but they have no legal right. The inspectors of the Local Government Board have the right to attend, though not to vote.

Much of the work is done through the committees—the finance committee, visiting committees for the workhouse, infirmary, &c.

The Assessment Committee

A most important committee is the assessment committee, consisting of from six to twelve members. It must be appointed each year by the Guardians at the annual meeting. Upon this body is devolved the duty of sanctioning the Valuation List, prepared by the overseers for the parishes in the Union, on which the poor rate is assessed. It hears objections to the list, and from it there lies an appeal to the Quarter Sessions

Personal Responsibilities of Guardians

The duties of Guardians in respect of contracts are very strict. They are controlled by the General Order of 1847. Contracts must be under seal, otherwise the Guardians will only be liable for necessaries, for goods actually received, or services rendered. In the case of all orders which may amount to the value of £50, tenders must be duly invited before the order is placed. The procedure for the payment of accounts must also be exactly followed. In all cases amounting to a value of £5 the order must be drawn on the treasurer in the prescribed form. Each order must be signed by the presiding chairman and two other Guardians, and countersigned by the clerk. This last requirement, it will be easily seen, entails a great amount of mechanical work, and efforts have been made to induce the Local Government Board to allow the inclusion of several items in the same order, as can be done in the case of payments by County Councils.

Poor-Law Officers

The actual work of the Guardians is discharged by the officers. These are the clerk, treasurer, medical officer of the workhouse and district medical officers, chaplain, master and matron, and other officers of the workhouse, relieving officers, vaccination officers, nurses, and others They are appointed by the Guardians, with the approval of the Local Government Board, which can itself appoint if the Guardians fail.

All poor-law officers are entitled to pensions at the age of 60 after 40 years' service, or at the age of 65, and in other special cases, under a partially contributory scheme The character of the duties will be gathered from the nature of the office.

The Right to Relief

A person becomes entitled to poor relief from the rates in the first place from the parish where he is resident at the time, but permanently only where he is legally "settled", provided he has not become "irremovable". An Act of Charles II, simplified by later statutes, laid down the law of "settlement", which has always been a much litigated subject Briefly, it may be said that a person becomes irremovable from the parish after one year, and acquires a settlement after three years. A woman on marriage takes her husband's settlement; a child under 16 takes its father's, or, if illegitimate, or if the father is dead, its mother's, and after 16 retains it till another is acquired. If a pauper is removable, an order can be obtained from the magistrates, sending him back to the parish of his settlement.

It is the duty of the Guardians to recover the value of relief given to a pauper from any person liable to maintain him and able to pay. The parents, or grandparents, for children and grandchildren; a husband for his wife and children; a widow or unmarried woman, or married woman with separate estate, for her children or husband and children, and children for parents, are the persons liable.

Indoor Relief

This is for the most part in the workhouse. Workhouses were sometimes established by private Acts before they became general. The first appears to have been at Bristol in 1697. They became general in 1723, and there is now as a rule at least one in every Union, although a Union may contract with another for the reception of inmates. Their regulation is provided for under the General Order of 1847. All plans for the construction or alteration of poor-law buildings must be submitted to the Local Government Board for close examination and approval.

Rules are provided for the classification of the inmates according to sex, and as to whether they are infirm or able-bodied, children under 7, and

children from 7 to 15, and also in respect of moral character, or in any other desirable way. Special orders have been issued for the more comfortable treatment of the deserving and aged poor in and outside the workhouse. The provision for special classes includes an infirmary for the sick, which sometimes reaches a very high degree of efficiency.

Children under the Guardians

The education and upbringing of children in charge of the Guardians is a most important department. Of late years the tendency has been towards boarding out in cottage homes or in the country, where they may be educated at a "certified" school, instead of the large poor-law schools. Every child is brought up in the religion of its parents. The special consideration which is now shown to the children has been amply justified by the results in after life.

Other Special Classes

Lunatics and imbeciles, if harmless, may be accommodated in the workhouse Otherwise they are sent to an asylum The casual ward for destitute wayfarers is regulated in accordance with the General Order of 1882 Vagrants may be put into separate cells or associated wards. The master must keep a book in which to enter all casuals.

Aged married couples, over 60, are not compelled to live apart. Special provision may be found for them in "the House", or in cottages or almshouses.

The Guardians also have to arrange for the burial of paupers from the workhouse, or, if they think fit, of paupers outside. They may make contributions to a burial ground or maintain one.

Outdoor Relief

This may take the form of money payment or assistance in kind, medical attendance, assistance in apprenticeship, education, allotment of land, or emigration. Outdoor relief can only be given under the provisions of the Orders of 1844 and 1852; and not in general to able-bodied persons. The latter, however, can be done in certain sudden cases under the sanction of the Local Government Board, to whom it must be reported. In large towns the grant is restricted to those who are not working for wages, and half must be given in kind after the allotted task has been performed. For this purpose labour yards may be established for able-bodied persons. Medical relief is given through the district medical officers.

In order to save the special provision of institutions, arrangements are often made by which the Guardians subscribe to associations for that purpose. This system is also found useful in other cases. A Nursing Order regulates the qualification of nurses.

Emigration

Legislation enables the Guardians to take into consideration the emigration of paupers, especially children. It is usual to co-operate with the various agencies having emigration under their care Since the scheme was started, in 1883, many thousand children have been sent abroad, mostly to Canada. The latest reports are to the effect that such emigrants are doing well.

Extra-Poor-Law Functions

It is the duty of the Guardians to administer the vaccination laws, and to see that every parent has his child vaccinated within six months. "Conscientious objectors" are allowed, after obtaining a certificate from a magistrate, to secure exemption from these provisions.

The Union is divided into sub-districts also for the registration of births and deaths, with a registrar for each and a superintendent registrar for the whole. The Registrar-General, appointed by the Local Government Board, may constitute districts, and registrars appointed by the Guardians are removable by him. The fees are paid by the Guardians from the common fund, assisted by an exchequer grant. A Registrar for Marriages is appointed for the same district and is generally the same person.

The duties of the Unemployed Workmen Act, 1905, are also partly carried out by the Guardians, co-operating through a local distress committee with the central body, in urban districts of not less than 50,000 inhabitants. The central body may provide work for necessitous cases out of funds partly voluntary, a rate limited to ½*d.*, and Government grants.

Finance of the Union

The "common fund" is chiefly derived from the poor rate, contributed by the various parishes. This rate is levied in accordance with the Valuation List, which is also the basis of assessment for other rates. The rate is collected by the overseers of the various parishes, in practice by the paid assistant overseers. The "common fund" is augmented by certain grants from the Imperial Exchequer, in respect of officers' salaries, provision for lunatics, and other matters. The accounts of the Guardians must be strictly kept in accordance with the rules

laid down by the General Order of 1867. Items must be entered from the clerk's minute book into the general ledger. A relief order book, check book, petty cash book, &c., must be kept by the clerk, and he must, before each meeting, examine and report on the books kept by the master and relieving officers. These are the master's day book, account of receipts and payments, inventory of stores, &c. Separate Orders also govern the keeping of the accounts of special departments of the Union system, which is regulated throughout on stringent and uniform lines.

Borrowing Powers

The construction of new works is invariably met by means of loans. These at once require the assent of the Local Government Board. The repayment is spread over a period generally of 30 years for new buildings, 15 to 20 for alterations, and 60 years for site values. The outstanding loans of the Union must never exceed in total one-quarter of the annual rateable value of the Union, unless by Provisional Order this is extended to one-half. In London there are additional powers.

EDUCATION AUTHORITIES

The system of elementary education in England and Wales underwent drastic alterations by the Act of 1902. The central authority is the Board of Education, which was established as a separate office only in 1899, and consists of a President, Parliamentary Secretary, and Permanent Secretary, with a Permanent Secretary for the Welsh Department. It has a control over the education authorities in the country analogous to that of the Local Government Board over local government authorities.

The Education Act of 1902 abolished school boards, which throughout England and Wales had hitherto been the directly elected authorities for elementary education. The Act constituted local education authorities. These consist of the council of every county or county borough both for higher and elementary education, and of the council of a borough of over 10,000 population, or an urban district of over 20,000, for elementary education. Such a borough or urban district may, however, decide that the county authority shall be the local education authority.

The first duty imposed upon the new authorities was the preparation of a scheme to be approved by the Board of Education, under which an education committee was created. To this committee all educational matters, except the power to raise a rate or to borrow money, "stand referred". The boroughs and urban districts, with less population than the figures stated, have powers for assisting higher education in conjunction with the County Council. The County Council—the ordinary authority for elementary and technical education in a county—may appoint an education committee consisting entirely of members of the Council or otherwise. Other councils must appoint a committee with a majority of their own members. A few specially qualified persons are generally co-opted from outside. Without the report of the education committee, the Council only deals with educational questions of an urgent character, except as regards finance.

The chief duties of the Council and the education authority are the control of schools, appointment and direction of teachers, and financial provision. The authority generally appoints a director or secretary and clerical staff as well as the teaching staff. The management of schools depends upon the character of the school. Public elementary schools are of two classes: the "provided school", that is, a school owned by the education authority, and the "non-provided school" or "voluntary school", privately owned. For the provided schools the County Council appoints four managers and the minor local authority two. For the non-provided schools there are four foundation managers and two representing the local authorities; while the local education authority maintains and keeps efficient all public elementary schools. The managers carry out the directions of the authority as to secular education. The managers of a non-provided school control the religious teaching, but must provide the schoolhouse free of charge for the uses of elementary education.

The expenses of elementary education are then defrayed partly by grants from national funds, and partly from local rates and by loans.

In consultation with the Board of Education, local education authorities must supply or aid the supply of education other than elementary, which includes the training of teachers. Funds for this purpose are provided from the local taxation account, and by a rate not exceeding 2*d.* in a county, or in a non-county borough or urban district 1*d.*

Contracts by Education Authorities

It is obvious that education authorities spend a large sum of money on the provision and furnishing of schools. Contracts for the building

of schools are placed upon tenders, and are subject to the approval of the Board of Education. The buying of school furniture, books, and stationery is exercised by the central local authority, not in general by the particular school authority. It is not permissible to solicit orders from the schools, and the suppliers of the various articles must be placed upon the approved list.

LONDON GOVERNMENT

The government of London, County, City, and Borough, is altogether exceptional, and there is no chief authority for the whole, owing to the historic independence of the Corporation of the City of London. The government is therefore shared by the Common Council of the City, the London County Council, the London Borough Councils, and the special authorities dealing with the poor law, asylums, education, water, the Rivers Thames and Lee, and the Port.

The City Corporation

The City Corporation is founded on charters which go back to Saxon times. The Mayor, Commonalty and Citizens, or Common Council, is the ancient City Corporation, and consists of a Lord Mayor and 25 other Aldermen, with 206 Common Councilmen. The method of election of Lord Mayor is archaic. The members of the Livery Companies nominate two candidates eligible for the office, and the Aldermen select one of them as Lord Mayor. The Aldermen are elected for life, for each ward at wardmotes, and are also the Magistrates for the City.

The Common Councilmen are elected annually by £10 rated occupiers The Council has various high officials, including the Recorder, who is elected by the Court of Aldermen for life, subject to the approval of the Crown; the City Chamberlain, who is also the treasurer; the Common Sergeant, the Town Clerk, Clerk of the Peace, the Commissioner of the City Police, the Comptroller, the City Remembrancer, the City Solicitor, the Secondary. Two Sheriffs are annually elected by the Livery, i.e. the freemen of the City Companies.

The Corporation has more than the usual powers of local government, and is the Public Health Authority within the City and the Port Sanitary Authority. It also controls the City markets and bridges, and is the local authority under many important statutes. It supports its own police force, and possesses a large revenue drawn from City lands and markets. It is the conservator of Epping Forest and other open spaces. Its accounts are entirely within its own jurisdiction, and it has power to borrow without the consent of the Local Government Board.

The authority of the London County Council does not extend within the City, except in regard to main drains, the Embankment, and the Fire Brigade.

London Borough Councils

The municipal government of London outside the City is in the hands of 28 Borough Councils, which, by the Act of 1899, took over the powers and duties of the old vestries and district boards, and had new powers entrusted to them. The most important of these authorities is the Council for the City of Westminster—a city which was made up of the union of several parishes in Westminster and the district of the old Strand Board of Works.

Each Council is composed of Mayor, Aldermen, and Councillors, after the fashion of municipal corporations. Councillors must be electors or residents for at least one year. They are elected for three years, one-third of the representatives of each ward retiring annually, or, as is general, the whole of them retiring every three years. There are the usual municipal officers.

The Borough Councils have only an indirect interest in education and the appointment of school managers. The education authority for the whole of London is the London County Council.

The Borough Councils, through their assessment committees, are the rating authorities for London.

London County Council

The London County Council is the largest and most important of all the County Councils in the country, consisting of 118 elected Councillors and 19 Aldermen. In general outline, the Council has the same constitution and powers as other County Councils, but has additional authority conferred upon it by the Act of 1888, and by subsequent legislation. The Council is the sanitary authority as far as main-drainage and sewage disposal are concerned, and has the supervision of the Borough Councils, and may itself make and enforce by-laws. It administers the Housing of the Working Classes and the Town Planning Acts, the Artisans' and Labourers' Dwellings Improvement Act, and is the author of many important housing schemes. It is the authority under the Build-

ing Act, and maintains the Metropolitan Fire Brigade. It is the authority in regard to main streets, buildings, and improvements not of a local character, maintains the bridges outside the City, and the Thames Embankment, together with the lighting of the Embankment; and regulates traffic and street names. The County Council also controls many parks and public open spaces, maintains the tramways of the metropolis, certain lunatic asylums, reformatory and industrial schools; licenses theatres and music halls, also slaughter-houses, and (outside the city) offensive trades; stamps and tests weights and measures; regulates water supply (outside the city), and is the authority under many other Acts as well as the education authority for the metropolis.

The accounts are made up to the 31st March, and are subject to Government audit.

The Metropolitan Markets at Southwark, Whitechapel, and Woolwich are under statutory authorities, subject to indirect municipal control.

The principal officials of the London County Council are the Clerk of the Council, Comptroller, Chief Engineer, Architect, Valuer, Solicitor, Medical Officers, Chief Officer (Public Control Department), Chief Officer (Parks Department), Statistical Officer, Educational Advisor, and the chief clerks, inspectors, managers, and officers of the various departments.

Education Authority

London received special treatment under the Education (London) Act, 1903, which, while abolishing the School Board for London, constituted the London County Council the sole education authority. Under the scheme an Education Committee was formed which consists chiefly of members of the Council. Elementary education is under the direct authority of the London County Council, and higher education is directed by the Council in association with other authorities, such as the University of London, the City Companies, the governing bodies of secondary schools, polytechnics, and technical institutes. The management of provided and non-provided schools is similar to that obtaining in the country. For secondary schools, training colleges, &c., the committee is assisted by advisory or local sub-committees.

The Council spends over £5,500,000 annually on education, and has about 550 provided schools and over 370 non-provided schools, over 50 higher elementary and higher grade schools, and open-air schools, and over 20,000 teachers. There are also schools for the blind and deaf, and for children mentally and physically defective, industrial schools, and the use of reformatory schools. There are over 100 secondary schools, with accommodation for about 34,000. The scholarship scheme provides for university, technical, industrial, and other advanced training. Seven training colleges for teachers have been established. University education is carried on in the London University and in recognized schools of the University. Technical and evening-school education is carried on in polytechnics and technical institutes and in evening schools.

Metropolitan Water Board

The Metropolitan Water Board was created in 1902 to purchase and carry on the undertakings of the various metropolitan water companies. The Board consists of the chairman, vice-chairman, and 66 other members appointed by the London County Council, City Corporation, London Borough Councils, and other local authorities in and near London. The purchase of the various undertakings and the initial expenses came to nearly £40,000,000, which was discharged by the creation of Metropolitan Water Stock. In consequence of the high price and costs of transfer the Board has never been free from anxiety.

The Metropolitan Asylums Board

The Metropolitan Asylums Board consists of 73 members nominated by the Boards of Guardians and the Local Government Board. The Board maintains hospitals for imbeciles, infectious patients, convalescent and smallpox patients, schools, an ambulance service for London, and a training ship for boys from Poor-Law schools.

The Thames Conservancy

The Thames Conservancy has authority over the Thames from Cricklade in Wilts to the limit of the Port of London Authority at Teddington. The Conservators have charge of the maintenance and improvement of navigation, the registration and regulation of craft, prevention of pollution, and the control of fisheries. They derive their income from tolls, fees, and other payments on account of water supply.

The Lee Conservancy

The Lee Conservancy is in a similar manner responsible for the control of the River Lee and its tributaries. Fourteen of its 15 members are appointed or elected by local authorities, and one by the barge-owners on the river.

The Port of London Authority

The Port of London Authority was created in 1909 to take over the control of the port and docks of London and the River Thames from Teddington to the sea. The Authority was created in consequence of the report of a Royal Commission which was unanimously in favour of such an authority to replace the Thames Conservancy and the various dock companies which before that date controlled the shipping of the Thames. The Authority consists of the chairman, vice-chairman, and 18 selected and 10 appointed members, while one or two additional members with special experience may also be appointed by the Board of Trade. The properties absorbed by the Authority were the London and India Docks, Surrey Commercial Docks, and Millwall Docks, and the Watermen's Company. The duties of the Authority as far as navigation is concerned are in reference to the regulation of vessels navigating the river and discharging or loading cargo, the improvement of the bed of the river, repairing banks, and other works, licensing of docks, piers, stages, cranes, &c., the maintenance of moorings and beacons, and erection of piers and landing stages. (See also Part V.)

The Authority has been engaged in the attempt at uniformity in tonnage dues, and a general improvement and assimilation of charges on the river. Large additional outlay became necessary.

All receipts are paid into a common fund, out of which payments are made, any surplus being carried to the Reserve Fund. The chief officers are the secretary, comptroller, chief engineer, dock and warehouse manager, and harbour master.

Poor-Law Authority

The Poor-Law Authorities of the Unions in the metropolis are similarly constituted to those in the country, but there is a Metropolitan Common Poor Fund to which the various Metropolitan Unions and parishes contribute according to their rateable value. Out of this fund is defrayed the cost of the maintenance of pauper lunatics in asylums, fever and smallpox patients in special hospitals, casual paupers, and other expenses, including the salaries of Poor-Law officers.

SCOTLAND

Local government in Scotland is divided between County Councils and Municipal Councils; the latter the councils of cities, royal, parliamentary, and police burghs. The cities are Edinburgh, Glasgow, Aberdeen, and Dundee Royal burghs owe their creation to ancient charter, express or presumed. Parliamentary burghs had the right conferred upon them by the Act of 1832 of sending members to Parliament. Police burghs are formed, under the Police Acts, of townships with a population of 700 or upwards. The Town Councils (Scotland) Act, 1900, consolidates the regulations as to election and procedure.

The Provost, or Lord Provost, is the chief magistrate and head of the town council. The bailies—the counterpart of the English aldermen — are, however, first elected as councillors, and seek re-election every three years. They are also magistrates and, for the burghs of over 7000 inhabitants, the licensing authority. Survivals of the medieval guilds are found in Glasgow in the Lord Dean of Guild, President of the Merchants' House, and in Edinburgh in the Dean of Guild and other officials whose duties are concerned chiefly with charitable funds. But the Dean of Guild also presides over the committee of the town council; and the Dean of Guild's Court has jurisdiction over new buildings and street regulations, and appoints the Master of Works. The decisions of this Court are only reversible by the Court of Session. Chairmen of committees are called conveners. The electorate consists of persons, male or female, resident or carrying on business in the burgh, and such persons are eligible for election.

The principal funds of the burgh are derived from rates, and the method of rating has been already noticed. (See Part I, Chapter VIII.)

The city of Glasgow and some other burghs have an exceptional fund called the "Common Good", the only parallel to which in England is found in the City of London. The corporation has a wide discretion as to its disposal. It comprises the markets and other tolls of the city in Glasgow, and out of it the Glasgow tramways were constructed, the revenue of which therefore accrues to the fund.

The accounts of burghs are made out in accordance with an Order of the Secretary for Scotland. Auditors are also appointed by the Secretary of State.

There is an annual Convention of Commissioners, consisting of delegates from rural and Parliamentary burghs, at which matters of common interest are discussed.

The Local Government Board consists of the Secretary for Scotland, the Under Secretary, the Solicitor-General, and a salaried vice-president, legal and medical members, with officers.

In Scotland School Boards continue to exist, and the Act of 1908 conferred further powers upon them. They may provide any form of instruction sanctioned by the Scottish Education Department, as well as continuation classes.

The School Boards are supported by local and imperial funds, the former consisting of voluntary subscriptions as well as rates. The schools are public, Church of Scotland, Free Church, Episcopal, Roman Catholic, and of every denomination. Secondary and technical education is provided in day schools and secondary schools. The Scotch Education Department is the central authority, consisting of a secretary and assistant secretaries.

IRELAND

Local government in Ireland closely resembles that of England and Wales as regards county and urban districts. There are the cities of Dublin, Belfast, Cork, Limerick, Londonderry, and Waterford, with Lord Mayors in Dublin, Belfast, and Cork. These are also county boroughs. Secondly, there are the urban districts, including some boroughs which have corporations, but the powers only of urban districts. Thirdly, there are towns governed by Commissioners, with rates raised by the County Council. Other smaller towns with a separate constitution are administered by the rural district councils. The Local Government Board (Ireland), which is a body composed of the Chief Secretary (as president), the Vice-president, and Commissioners, has the discretion of conferring additional powers on the smaller authorities.

County Councils were established to take the place of grand juries in respect of local government, and have had additional powers conferred upon them. The rural district council resembles its English counterpart in governing the area of poor-law unions, but rural districts in Ireland are made more subordinate to the County Council, which supplies them with funds. Urban and rural district councils are authorized by a recent Act to advertise the advantages of their districts as health resorts.

County and borough councils have special powers in respect of agricultural and technical instruction, and can expend the amount of a penny rate, with the approval of the Department of Agriculture and Technical Instruction for Ireland.

A General Council similar to the Scotch Convention has been established with the object of interchange of opinion between County Councils.

In Ireland elementary education is controlled by commissioners of national education, with a resident commissioner in Dublin. The schools are ordinary schools, convent, monastery, workhouse, and model schools, and a fishery school. Secondary education is administered by commissioners. Expenditure is defrayed chiefly from State grants.

EXERCISE OF POWERS BY LOCAL AUTHORITIES

The powers vested in the various local authorities must be exercised in accordance with the directions contained in the several statutes controlling them. Should they attempt to exercise a power not conferred upon them, as by the expenditure of money in an unauthorized direction, they may be restrained by the Courts by a writ of *mandamus*. The Courts are constantly limiting the actions of local authorities on the grounds of *ultra vires*. (See p. 133 *ante*.) Should they exercise authority in a manner not prescribed by law, the Council or any individual member so acting may be called to account by the Courts by a writ of *quo warranto*. Councils may be similarly compelled to carry out duties which they show a disposition to neglect.

Precisely in what way a local authority shall carry out the business deputed to it depends upon its character, and it is impossible to deal with the varieties of rules which control the actions of particular bodies.

The meetings of municipal corporations and County Councils are governed by the second schedule of the Municipal Corporations Act, 1882, and, subject to these provisions, by their own standing orders. The proceedings of district councils are governed by Schedule I of the Public Health Act, 1875, and the Local Government Act, 1894, while Parish Councils are directed to act in accordance with Schedule I of the Local Government Act, 1894. The election of chairman or mayor must be carried out in accordance with these requirements at the time stipulated. The method of appointment of the principal officers of the Council is also prescribed.

All the local authorities which we have outlined are bodies corporate, with power to contract under a common seal, except parish councils. Contracts must be passed under the common seal, which is generally affixed either in open Council or by authority, and attested by the clerk and the signatures of two or more members of the Council.

The contracts of an urban sanitary authority are governed by Section 174 of the Public Health Act, 1875. Every contract of the value of £50 and upwards must be in writing and sealed with the common seal, and contracts must specify the nature of the proposed work, the time of fulfilment, and provide a penalty for non-performance. The Council must obtain an estimate and report of their surveyor before commencing any work, and before entering into a contract to the value of £100 they must give ten days' notice and take security for its due performance.

Rural authorities are subject to the ordinary law of corporations, and must contract under seal, except with regard to trifling matters of everyday occurrence. (See also Chapter II of this Part, and p. 98.)

Qualification and Disqualification

The qualification for membership of a local authority varies, and by recent legislation a much wider scope has been given to electors in local government elections. This has doubtless created a wider interest in local affairs. A member of a parish council or district council need only be a parochial elector or resident for twelve months within the parish or district. Membership of a municipal corporation or of a county council is based on a somewhat more involved qualification, as we have seen. The fact that such a person possessed the qualification at the time of election is the test. There are also numerous disqualifications in addition to that most important one of interest in some contract with the particular authority. A person is disqualified for the office of parish or district councillor or guardian—

(*a*) If an infant or alien;

(*b*) If he has within twelve months of the election and since the election received poor-law relief;

(*c*) If he has within five years been convicted and sentenced to imprisonment with hard labour, if he is adjudicated bankrupt or has made a composition or arrangement with creditors, or holds any paid office under the Council.

Persons are disqualified for being members of municipal corporations on similar grounds, and also if an elective auditor, or holding any office other than that of mayor or sheriff in the gift or disposal of the Council, or if in holy orders or a regular minister of a dissenting congregation. With the exception of the disqualification of clergy and ministers of religion these disqualifications also attach to members of County Councils. The office of councillor may also be declared vacant where the member absents himself for a certain time without reasonable excuse. Members must never vote on questions in which they are personally interested.

Interest in Contracts.—No rule is more clearly laid down and understood than that a member or officer of the Council must not himself be interested in any contract. The language slightly varies in the particular statutes, but any interest in any bargain or contract entered into with the council, or participation in the profit of any such bargain or contract, or of any such work, disqualifies for membership, and subjects any interested member to heavy penalties

A member must not be interested in a sub-contract, or indirectly obtain a payment from the Council either by his partner or himself. Certain exceptions have been laid down which relate to an interest in the sale or lease of lands, or loan of money to the Council, or supply from land of which he is the owner of stone, gravel, or other materials for road making, or the transport of such materials; an interest in any newspaper in which any advertisement relating to the affairs of the Council is inserted; an interest in any contract with the Council as a shareholder in any joint-stock company. But in the last case a member must not vote on any question in which his company is interested, except in the case of a water company or other company established for the purpose of carrying on works of a public nature, when the prohibition is dispensed with by the County Council.

Members, officers, and servants of local authorities who corruptly accept or solicit any advantage for themselves for doing or forbearing to do anything in respect of any transaction in which the authority is concerned are guilty of a misdemeanour. The other party to the bribe or attempt is equally guilty.

Committees

The bulk of the work of local authorities is performed in committee, but, with the exception of the education committee, before noticed, and the watch committee, the acts of the committee must be confirmed by the Council. The finance committee examines the accounts, and reports to the Council as to their payment.

Borrowing Powers

All local authorities have powers for contracting loans for outlay upon permanent works or undertakings within the scope of special Acts of Parliament. The immense total of the loans of local authorities has often been the subject of criticism aud alarm; but, unlike the National

Debt, municipal borrowings are set off by municipal properties—often remunerative.

Parish Councils can only borrow with the consent of the County Council and the Local Government Board. The loans of other authorities require the sanction of the Local Government Board, and a public local enquiry is often previously held. The loan is generally secured by mortgage of the local fund or rates, and in most cases the total amount borrowed must not exceed in the aggregate the total assessable value for two years of the assessable property in the district. These loans are for the general purposes of a local government or sanitary authority in connection with a provision of a more or less permanent character. In addition to this the more important local authorities seek sanction for contracting loans in connection with public works and undertakings, such as water supply, tramways, &c. In this connection many municipalities have powers for borrowing under special Acts. In the case of tramways the Board of Trade must sanction the loan.

County Councils can borrow for the general purposes of county administration, and have special borrowing powers in connection with asylums, housing, light railways, &c. The more important municipal and county councils raise loans by means of stock, debentures or annuity certificates, as well as by mortgage. The raising of loans by means of bank overdrafts, except for merely temporary purposes, is illegal. The period for which a loan can be contracted varies with the character of the purpose to which it is devoted. Repayment is spread over a period of years—in the case of new buildings thirty years, purchase of land sixty years—which is the maximum period allowed for poor-law loans

Audit

The forms of accounts of county councils and district councils, as well as poor-law authorities, are prescribed by Government and audited by Government auditors. The accounts of a municipal corporation, with certain exceptions to which Government audit has been applied by special Act, are not so prescribed, and are audited by two elective auditors and one mayor's auditor. Some corporations have, however, adopted a professional audit in addition. Parish Councils are required to make a financial statement in a prescribed form, and this, with the accounts of the parish and the overseers, is audited annually by Government auditors. The accounts of all local education authorities and distress committees are audited by the district auditor.

The most effective control of all is exercised by the Local Government Board over poor-law authorities. Any irregularity or unauthorized expenditure is almost certain to be detected then. It is at once disallowed by the auditor, and the individual Guardians signing the order become liable for the payment out of their own pockets.

The audit, which is similar to that of District and County Councils, is carried out half-yearly by the district auditors appointed by the Local Government Board. They are paid by Government, but the Government recoups itself by means of audit stamp duties. Each auditor has his district The ordinary audit of poor-law accounts is half-yearly, but the Local Government Board may order an extraordinary audit. Fourteen days' notice must be given by the auditor to the clerk of the Guardians of his intended audit, which must be advertised and notified to the parish overseers. Seven days before audit the overseers' and assistant overseers' rate books and accounts are deposited in the parish for the inspection of the ratepayers, and the Guardians' accounts are similarly deposited at the Union workhouse. A ratepayer is not only entitled to inspect, but may be present and take objections at the audit. The auditor has power to require a statutory declaration from any person accountable, and generally to charge or surcharge, allow or disallow any expenditure at his discretion. His duty is to see that the form of the accounts is in order and that every item of expenditure is legally incurred.

Where the auditor has disallowed any expenditure, the Guardians may appeal to the Local Government Board, which may allow the expenditure, if made *bona fide*, under the special circumstances. There may also be an appeal to the High Court. If everything is in order, the auditor gives a certificate to the Guardians and makes a return to the Local Government Board.

(See further as to audit, p. 195 and Part VII of this book.)

Corrupt and Illegal Practices

The election of members on local authorities is subject to the law against corrupt and illegal practices, and any election which has been obtained in this manner may be questioned by petition.

The expenses which a candidate may incur on account of his election are limited, and must be declared by him.

Public Enquiry

A local enquiry is made by the Local Government Board for many purposes besides the sanc-

tion of loans. Extension of boundaries, traffic regulations, or other applications, may be the subject.

If there are special circumstances in connection with any particular union or local government district, and representations are made to the Board that illegal and improper transactions have been taking place, the Local Government Board may order an enquiry. Enquiries are conducted in public before an inspector appointed by the Board; the parties may be professionally represented, the subsequent proceedings depending on the nature of the finding.

C. Municipal Trading

Development of Municipal Trading

Municipal trading in Britain is confined in the main to four great departments of public service, viz. water, gas, electricity supply, and tramways undertakings. These four classes of enterprise account for at least three-fourths of the local reproductive debt, the remainder being represented by less-controversial branches of municipal activity such as markets, baths and washhouses, burial grounds, working-class dwellings, harbours, piers, docks, and quays. It is a mistake to assume that municipal trading is an innovation of recent years. The last generation, it is true, has seen a great development in direct ownership and operation amongst the local authorities of the country, but the fundamental principles of the system were embodied in the general law many centuries ago. The Act authorizing the water supply of Plymouth was passed in the year 1585, through the influence of Sir Francis Drake, the celebrated navigator, who was mayor of the town at the time, and who, it is said, made a considerable fortune as contractor for part of the work. The supply came from Dartmoor in an open "leat", and Drake established a number of mills on the "leat". The City Corporation of London, at about the same period, owned huge granaries from which the population was supplied with corn, and it also controlled the London water supply, which, afterwards transferred to private companies, was ultimately restored to public hands after an expenditure of something like £40,000,000.

A great impetus to the modern municipal trading movement was given by the City of Birmingham. During Mr. Joseph Chamberlain's mayoralty (1874-6) those two great branches of the common service, the water and gas supplies, were municipalized. Birmingham has now a water supply that is obtained from the Welsh mountains. It cost nearly £7,000,000 to provide. "What private company", the advocates of municipal trading ask, "could afford to undertake an enterprise of such magnitude, involving, as it necessarily does, a charge upon the city's rates for many years to come?" Mr. Joseph Chamberlain's municipal regime was followed by many others, the result being that nearly every public service in the city that answers to the description "a natural monopoly" is owned and operated by the Corporation. Liverpool is another great "municipal trading" centre. The Corporation was the first public authority in the country to establish public baths and washhouses. The first were purchased in 1794 for £4000, and in 1842 the public washhouses were opened. Through a succession of years others followed quickly, and Liverpool has now perhaps the most extensive and varied bathing arrangements in the country. Liverpool has also a water supply which rivals that of Birmingham. It comes from Vyrnwy Valley in Montgomeryshire. The city, like many others possessing ancient charters, is very rich in real and personal estate. In England other great municipal trading cities and towns, in addition to those mentioned, are Manchester, Sheffield, Leeds, Huddersfield, Carlisle, Newcastle-on-Tyne, and Nottingham. Glasgow, however, is the real "Municipal Mecca" of the United Kingdom, and thousands of students from America and the continent of Europe visit that shrine every year. Municipal influences and advantages attend the Glasgow citizen at every turn; but though he may be nurtured on sterilized milk from the municipal depot, he cannot be buried in a municipal cemetery when he dies. Glasgow has undertaken greater and bolder schemes than any public body. In addition to municipalizing all the common services except the cemeteries, the city took the lead in establishing municipal telephones, which have now, however, been transferred to the Post Office. Portsmouth and Hull are the only municipal authorities in the kingdom now owning and operating telephone services. The water supply of Glasgow comes from Loch Katrine. When the city's tramways were converted from horse to electric traction the change-over took place in a single night. Passengers rode home in horse cars from their work one evening, and re-

turned in "electric" cars the following morning. Forty years ago the Corporation abolished the contractor in its cleansing department. The whole work is directly managed by the municipality, and presents a variety of economical methods in the disposal of all kinds of refuse. The department has refuse destructors and utilizers, furnaces which burn and machines which sift the vast mass of ashes, dust, refuse, and street sweepings collected daily.

The Arguments for and against Municipal Trading

Municipal bodies which have thus extensively embarked upon municipal trading undertakings, and smaller authorities that have followed in their wake, justify their action by saying that full public ownership is the only guarantee of full public control. They argue that services like those of tramways, water, gas, and electricity are necessarily of a monopolistic character. You cannot have two tramway systems operating in the same street, and it would be highly inconvenient for two systems to operate even in the same town, except in the case of a very large one. Even if they did, they would not be competitive in the ordinary acceptation of the word. The same argument applies to gas, water, and electricity. Each of these services is necessarily a monopoly in the town or district which it serves. It is desirable, the municipal traders contend, that enterprises of such a character shall be controlled by a public authority, as, uncontrolled, their owners are able to charge what prices they please for the services they render, and pay what wages they please to the people they employ. The system of purchasing or establishing an undertaking and transferring it to a private company for operation under specified conditions is unsatisfactory, the advocates and defenders of municipal trading allege. It has been tried in America with bad results, and it has been attempted in our own country—and is still in operation in many cities and towns—but it has failed to give the public authority that control over the public services which is said to be essential in the interests of the community. Thus the principal purpose of municipal trading is not the making of profits for the relief of the rates, although in many cities and towns such profits are made and do substantially relieve the rates, but the control of the public services, in order to ensure that the inhabitants shall be given those services at the lowest possible charges consistent with efficiency and financial stability.

In reply to these propositions the municipal trader is met with many criticisms. It is urged that the practice means in many cases rate-aided competition with private enterprise; that local authorities, being unexpert bodies consisting of all classes of elected representatives, are unfitted to manage these undertakings, and are unable, as a matter of fact, to manage them as efficiently as private companies; that the procedure associated with the administration of public bodies is unsuited to the creditable operation of industrial undertakings; and that if the accounts of these concerns were properly allocated and audited, it would be shown that the financial results were the reverse of satisfactory Arguing upon these lines, the critics of municipal trading secured in 1900 the appointment of a Joint Committee to consider the whole problem The Committee failed to present a report, and another Committee was appointed in 1903. The terms of its reference were "to consider and report as to the principles which should govern powers given by Bills and Provisional Orders to municipal and other local authorities for industrial enterprises within or without the area of their jurisdiction". A mass of evidence was taken, dealing entirely with the audit of municipal accounts, and in the end a report was issued in which the abolition of the existing systems of audit was recommended, and the substitution of a professional audit system was advocated. No steps were taken, nor have they been taken by any subsequent Government, to carry these recommendations into effect, but many large provincial corporations have adopted on their own account the professional audit in addition to the statutory audit Further, the Association of Municipal Corporations, together with other representative organizations of local authorities, have made frequent appeals for the legalization of the recommendations of the joint committee, it being considered that, quite apart from the question of municipal trading, the existing system of Government audit is unsatisfactory, and should be abolished. It should be added that all the accounts of local authorities, whether relating to municipal trading or other branches of the public service, rest upon a statutory basis; that compulsory provision is made for the maintenance of sinking funds so that the loans may be liquidated at the end of a period of years; and that, in addition, the local authorities concerned have set aside large reserve and depreciation funds that exceed in the aggregate the equivalent provision made by private companies, which are exempt from the statutory obligation to maintain sinking funds for the liquidation of capital.

In reply to the remaining arguments of the "anti-municipalists", the municipal traders contend that public ownership in Great Britain has

cheapened the cost of the services in question, although in many cases the local authorities have been handicapped by the onerous terms upon which these services were acquired; that the services have been improved, and in a variety of ways made more acceptable to the public; that the wages of employees have been increased and their labour conditions enormously improved; and that, over and above all these benefits, the ratepayers have had the satisfaction of seeing large sums devoted from profits towards the relief of rates.

In regard to the last-named point another heated controversy has been raised. The arguments by which the muncipal trader justifies the allocation of profits to rate relief rest broadly upon the general principle that ratepayers who have invested their funds and pledged their credit in respect of these enterprises have a right to a direct financial return. When "trading" powers are obtained from Parliament the funds of the municipality are risked to a certain degree. The ratepayer is pledged, in the case of a loss, to clear the deficit. More than one borough has had to shoulder a tramways rate, and Manchester ratepayers have been called upon for a ship-canal rate. It has never yet been proposed that the losses should be put back on to the consumers. Without the credit of the rate to fall back upon, it is argued that no Corporation could borrow money at rates so low as are generally obtained in the financing of municipal trading enterprises. The ratepayer has therefore a valid claim for a share in the profits, and there is the additional argument that the lower the rates are made by trading profits, the more desirable, from the manufacturers' and residents' standpoint, becomes the borough in which the course is adopted. The case against the allocation of profits to rate relief may be summed up in a few sentences. The practice results in the levying of an indirect and extra tax upon those people who can least afford to pay it. An estimate made in Manchester recently showed that 26 large firms paying some £56,000 a year for electricity had been given £2216 from the gas consumers' pockets in rate relief. That money was paid in the form of an indirect rate tax by small users of gas. Against the contention that the ratepayers are entitled to a return for the pledge of their credit, it may be urged that the consumers and patrons of municipal trading undertakings are already paying large sums, from which those who are not consumers and patrons are exempt, towards the city's funds. These enterprises are financed from borrowed capital, the charges in respect of which have to be made each year. The charges probably reach from 4 per cent to 7 per cent, and practically the whole of them are paid by the consumers, who are thereby buying for the municipalities valuable freeholds that will add to their credit and enhance their prosperity. To call upon these same consumers to pay more money in order that the rates may be relieved is an unjust as well as an indirect form of taxation which, whilst being unfair to the consumer, retards industrial development. To what extent, as a matter of fact, are rates returned from trading profits? A return compiled by Mr. James Carter, the Borough Treasurer of Preston, shows that during 1909–10 eighty large cities and towns provided in their estimates for the reduction of rates from profits from trading undertakings. Mr. Carter's return does not pretend to show the total rate relief in all towns, but it provides some exceedingly interesting examples of the financial results of trading undertakings. In a dozen cases at least the relief was a shilling in the pound or over, the most successful towns being Burnley, Darlington, Macclesfield, and Nottingham. This does not mean, of course, that the largest profits were made in these towns. The Manchester profits, for example, were estimated to amount to £144,250, of which large sum the tramways were expected to produce £75,000, the gas enterprise £50,000, and the electric-lighting undertaking, £12,000. The resultant rate relief was 8¾*d.* in the £. Liverpool's estimated profits were £138,756, representing a rate relief of 8½*d.* in the £. The actual results at Nottingham for the year 1909–10 are shown in the following table:—

Departments.	Consolidated Stock and Loans Invested.	Gross Profit for Year	Per Cent on Capital.	Interest on Capital	In aid of General District Rate	Set apart to Reserve, Sinking, and Depreciation Funds.
	£ s. d	£ s. d.		£ s. d.	£ s. d	£ s. d.
Gas ...	1,095,904 7 11	110,894 12 3	10 12	44,242 11 0	35,000 0 0	31,652 1 3
Tramways ...	466,708 8 5	56,772 11 10	12·16	16,539 19 4	20,550 0 0	19,682 12 6
Electricity ...	344,625 12 5	44,969 16 6	13 05	13,222 15 2	16,700 0 0	15,047 1 4
Totals ..	1,907,238 8 9	212,637 0 7	11·15	74,005 5 6	72,250 0 0	66,381 15 1
Water	1,249,305 10 10	71,360 15 6	5·71	46,481 8 3	—	24,879 7 3
Totals ...	3,156,543 19 7	283,997 16 1	9·00	120,486 13 9	72,250 0 0	91,261 2 4

The control over what may be felt to be excessive municipal trading is threefold, viz the original difficulty in providing the money; the disallowance of illegal expenditure by the auditor, and an injunction by the Courts, which has been granted in many leading cases. Reference has been made elsewhere to the general question of corporations exceeding their statutory powers. (See p. 133.)

Water

Taking the main departments of municipal trading separately, we find that in the United Kingdom as a whole there are about 1150 water undertakings belonging to local authorities. In about two-thirds of the county boroughs of England and Wales, in nearly all the non-county boroughs, and in about half the urban districts, the water supplies are in the hands of the Councils. In the metropolis the undertakings of the London water companies were taken over by the Metropolitan Water Board under the Act of 1902. In the following twelve towns in England the waterworks were originally constructed by the corporations: Bath, Coventry, Halifax, Hastings, Huddersfield, Hull, Oxford, Plymouth, Swansea, and Worcester, and in Croydon and Southampton as regards part of the supply. No one system has been followed in the municipalizing of water supplies. A return prepared by the Statistical Officer of the London County Council shows that as regards the county boroughs purchase was in twenty-three cases settled by agreement before the passing of an Act; in four cases purchase was effected by agreement under Acts, with the alternative, failing agreement, of arbitration under the Lands Clauses Consolidation Acts. Two undertakings, those of Liverpool companies, were acquired by arbitration under these Acts. Two transfers were settled by agreement after the passing of an Act authorizing purchase, and in one case purchase was effected by arbitration under special terms mentioned in the local act. Generally speaking, local authorities make no attempt to obtain profits from their water undertakings, which are regarded as sanitary and public health provisions. In many towns no direct charge is made for water, the cost being included in the general rates, and in other cases the charge to consumers is supplemented by a water rate. On the whole, however, the municipal corporations of England and Wales are making a fair net profit on their undertakings.

Gas

The Board of Trade reports relating to gas undertakings show that in 1908-9 there were 291 of these enterprises, which accounted for an outstanding capital of nearly thirty-one millions sterling. The consumers numbered about two millions and a half, and the approximate average charge per 1000 cub. ft. was 2*s.* 6¼*d.* These figures compared with 499 company undertakings, with an outstanding capital of nearly ninety millions sterling, a consumers' roll of 3,400,000, and an approximate average charge per 1000 cub. ft. of 2*s.* 10¼*d.* Local authorities have considerable power of control over company gas undertakings.

Electricity

According to the last statistics relating to electricity undertakings, about 1100 Orders have been granted by the Board of Trade, of which nearly all were confirmed by Parliament, some 300 have been revoked, repealed, or expired, the total number of Orders now in force being about 800. Orders are granted in perpetuity, but in the case of company Orders the local authority of the area of supply is given the right of acquiring the undertaking at the end of forty-two years. Local authorities, however, may buy out the companies by arrangement before the expiration of this period, and there are many instances where earlier terms of purchase than those specified in the Act have been arranged. More than a hundred local authorities have transferred their Orders to private companies, and many undertakings have been acquired by local authorities after being established by companies. In 1896, for example, the Liverpool Corporation purchased an electric-lighting undertaking that had been in existence for thirteen years. The capital expenditure when purchased was £264,711, and the purchase price was £400,000. As might be expected, the prices paid show considerable variation. The Marylebone Borough Council, which purchased in 1904 an undertaking that had existed for fifteen years, and upon which a capital of £549,449 had been spent, paid no less than £1,212,000. On the other hand, Exeter purchased in 1896 an undertaking with capital expenditure of £22,283, and paid £7500 only. The Leeds Corporation purchased in 1898, on the basis of the market value of the company's stock at the time of acquisition, the price working out at £370,580, on a capital expenditure of £217,420. In 1899 a movement was started for the supply of electrical energy for wide areas. Special Acts of Parliament had to be obtained, and a large number of them are at present in operation. (See art. "Water, Gas, and Electricity", also Chapter XXI of this Part.)

Tramways

No branch of municipal enterprise has made such rapid progress during recent years as that relating to tramways. Almost without exception every large town has completely municipalized its system. In some cases municipal corporations, anxious to get tramways completely under their control at the earliest possible moment, did not wait for leases to expire, but bought out the undertakings on terms that were profitable to the community. On the other hand, a large number of towns have constructed all, or part, of their tramways. It is considered that no tramway service can be of the fullest benefit to the people unless it is operated, as well as owned, by the municipality. The first town to operate its tramways directly was Huddersfield, which obtained authority in 1882. Plymouth followed in 1893, and Leeds in 1894. Parliament, which gave every facility for municipal ownership, was so anxious to prevent municipal working that a Standing Order of the House of Commons supplemented the interdiction in the Act, and precluded any Bill being introduced with the object of giving local authorities power to run tramways. It was not until the Session of 1896 that the Standing Order was suspended, and the House at once made reparation by unanimously passing the Sheffield Bill, which authorized the Corporation of that city to work its tramways. A few weeks after the passing of that measure Dover and Hull obtained similar powers, which are now readily granted. The Board of Trade returns show that local authorities own about 176 tramway undertakings, representing a capital outlay of more than forty-seven millions sterling. There were at the end of 1909 some 1700 miles of tramway open, and the average fare per passenger was 1·05*d.* Of the total number of undertakings owned, no less than 133 are directly operated by the local authorities. The system of construction most in operation is the overhead trolley system, but the London County Council undertaking is run on the conduit system. Wolverhampton, Lincoln, and a few other towns have adopted surface-contact systems, and Leeds, Keighley, and Bradford have obtained powers to instal what is known as the "trackless trolley system". During the financial year 1909, local authorities paid £330,225 in relief of rates from tramway profits, a sum equivalent to 2½*d.* in the £ on the assessable value of the assisted towns. Particularly large sums were handed over by towns and cities like Manchester, Glasgow, Leeds, Birmingham, Liverpool, Hull, Salford, and Nottingham. In addition to this, the municipal position was improved financially by the repayment out of revenue of money borrowed to the extent of nearly one million sterling. Provision for depreciation, &c., is made on a satisfactory scale, the average rate allowed being more than double that of companies.

Housing and other Undertakings

In regard to the housing of the working classes, numerous authorities have taken action, the dwellings erected being of five types, namely: Common lodging houses for men and women, with either bunks or cubicles; block dwellings four or five stories high; tenement houses of three stories; cottage flats in two-story self-contained dwellings; and cottages of various sizes, self-contained, with gardens. In some schemes, such as those at London and Liverpool, the municipal housing operations have been associated with slum clearances, which are very expensive. Municipal activities in housing have been encouraged and assisted by the passing of the Housing and Town Planning Act of 1909. In addition to the "trading" undertakings mentioned, municipal boroughs have established about 230 markets, 140 baths and washhouses, 143 burial grounds, and 43 harbours, piers, docks, and quays.

[Authorities.—The textbooks of *Lindley*, *Buckley*, *Palmer*, and *Gore-Browne* on "Companies"; of *Glen* and *Lumley* on "Public Health"; of *Arnold*, *Rawlinson*, and *Macmorran* on Municipal Corporations and other Local Authorities.]

CHAPTER V

SOCIETIES AND CLUBS

Introductory—Building Societies—Friendly Societies—Co-operative Societies—Clubs.

INTRODUCTORY

In this chapter it is proposed to deal with certain classes of associations which are not governed by the provisions of the Companies Consolidation Act, 1908. The chief of these are: (1) three forms of association dealt with by statute — Building Societies, Friendly Societies, and Co-operative Societies; and (2) Clubs.

Building Societies, Friendly Societies, and Co-operative Societies are regulated by different sets of statutes, which, however, bear a considerable family likeness, and have in view the same main object, namely, that of making the administration of these societies cheap and honest. Each class has been originally started by and for the benefit of the working classes and to encourage thrift; and Parliament has sought to make their management as inexpensive as possible, and also to protect the members from the risk of losing their money through the dishonesty of officials.

It should be pointed out that, in most cases, registration under any of the Societies Acts is optional. There is nothing to prevent the founders of a Building Society from registering under the Companies Act, or from not registering at all, although both of these courses would be very unwise.

It should also be mentioned that many bodies which are not companies in the popular sense can, and do, become companies by virtue of sections 19 and 20 of the Companies Act, 1908. These sections deal with companies formed "for the purpose of promoting art, science, religion, charity, or any other like object not involving the acquisition of gain". Such companies are allowed to register a name which does not end with the word "Limited". Under these sections many charitable bodies, chambers of commerce, law societies, colleges, schools, &c, have been registered. Except for one or two minor matters they are in the same position as trading companies. (See Chapter IV of this Part.)

There is one form of corporate body, namely, a corporation incorporated by Royal Charter, which is governed neither by the Companies Act nor by any of the Societies Acts. The grant of a charter is an exercise of the royal prerogative, and the constitution of such bodies is regulated by their charter. The Royal Society, the Royal Academy, many of the public schools, the city companies, and the colleges of Oxford and Cambridge, as well as large corporations trading and controlling territory abroad, like the British South Africa Company, are instances of corporations founded by Royal Charter.

There is also a class of corporation formed by Special Act of Parliament. This method is adopted where it is desired to give to the corporation additional powers to those which can be acquired by registration under any existing Act. Instances of such corporations are railway and tramway companies.

There are also a few unincorporated bodies whose constitution is regulated to some extent by Act of Parliament. Instances of this latter class are Trade Unions (see Chapter X of this Part) and Savings Banks (see Part IV).

With the above exceptions every association recognized by the law, whether incorporated or unincorporated, is governed either by the Companies Act or by one or more of the various Societies Acts.

Clubs are dealt with in this chapter as being associations other than limited companies But, strictly speaking, a club is not a legal entity at all. It is usually no more than a number of persons holding property jointly, and the liability of the members on contracts made on behalf of the club is regulated by the ordinary law of principal and agent.

BUILDING SOCIETIES

A Building Society is neither a limited company nor a partnership, but is an association formed for special purposes and regulated by statute, and the rights and liabilities of the members depend on their contract contained in the society's rules.

The main object of a Building Society is to enable its members to become the owners of freehold and leasehold houses. This object is attained in the following way. All the members contribute to a common fund, and from this fund loans, repayable with interest, are made to such members as desire to purchase houses. So soon as the member has purchased his house, he mortgages it to the society to secure the repayment of his loan It will thus be seen that there are two classes of members—those who lend, and are called "unadvanced" members; and those who borrow, who are called "advanced" members. The unadvanced members have the advantage of lending their money at a high rate of interest. The advanced members are able to purchase houses, the price of which they could not otherwise raise.

The name "Building Society" is singularly inapt, as the society does not build, and is not allowed to hold buildings If, by foreclosing a mortgage, the society becomes the owner of a building, it is obliged by law to sell it as soon as possible.

Although the acquisition of houses by their members is the chief object of Building Societies, they also do a large business in receiving deposits from members, and prior to 1894 some of the larger societies had altogether lost sight of their original objects, and were simply big financial and banking undertakings, which, by registering as Building Societies, were enabled to avoid the provisions of the Companies Acts.

Building Societies appear to have been invented about the beginning of the nineteenth century, and the first Act dealing with them was passed in 1836. In 1874 the statute was passed which is the basis of the present law on the subject. From that time forward they increased rapidly in numbers and wealth until about 1890. At that time some of the larger societies fell into the hands of men who used their funds for speculative purposes, far removed from the original objects of the societies. This speculation led to disastrous results, culminating in the failure of the well-known Liberator Society, in which over a million pounds of the savings of all classes were lost. As a result of the panic caused by this failure, the Act of 1894 was passed, which placed more stringent obligations on the officials of Building Societies, chiefly the obligation to give security for the proper discharge of their duties, to make annual statements of account to the Registrar of Friendly Societies, and to supply the members of the society with copies of the statement.

Nevertheless the prosperity of Building Societies decreased, the amount of capital invested in them falling from 54 to 43 millions. This was the more unfortunate because the failures had been caused by carrying on, not the operations for which building societies existed, but others which were in contravention of their rules. However, it is believed that, as a result of the increased protection given to members by the Act of 1894, the societies have now recovered their position; and there can be no doubt that, under proper safeguards, they serve a very useful purpose. Besides offering to all classes a useful and convenient method of investing their savings, they have enabled upwards of a quarter of a million people to become the owners of their houses.

Different Kinds of Building Societies

There are two main classes of Building Societies —Terminating and Permanent.

Terminating Building Societies were the original kind; and, as their name indicates, they start with a definite object in view, on the attainment of which the society comes to an end. The schemes adopted by different societies vary somewhat, but the simplest form is as follows. There are, say, fifty members, and each takes a share of the value of £100. This share is payable by fixed periodical (usually monthly) instalments. The society continues until all the shares are paid in full, and the £100, with the interest it has earned, is then (so soon as there is a sufficient fund in hand) paid back to each member, and the society comes to an end. In the meantime, and so soon as a prearranged sum has been collected by the subscriptions, loans are made to the members who desire to purchase houses, and the houses when purchased are mortgaged to the society. No loan to

a member can exceed the amount of his share, and a member who has received a loan continues to pay his subscription, and in addition pays a further periodical sum called redemption money. In the result therefore the unadvanced members do not receive their £100 back until the society ends, but the advanced members receive theirs in advance, and in the meantime pay interest on it under the name of redemption money. The amount of redemption money is sometimes fixed in advance and sometimes determined by a form of auction, the members who desire loans bidding against each other to obtain them. Examples of terminating societies (though not, of course, on such simple lines as the above illustration) are found in the well-known Starr-Bowkett Societies which exist in many parts of the country.

Permanent Building Societies, on the other hand, are not intended to come to an end at any specified date, or on attaining any specified object. The shares are not limited in numbers, nor are they all issued when the society commences business. The purchase money on the shares is payable either by instalments or by a lump sum. The purchaser of a share becomes a member, and is qualified to receive an advance from the society to buy a house, and, in the same way as in a terminating society, he mortgages the house as a security for the loan. But a permanent society does not divide up its capital among the members, and the advances are therefore really loans repayable with interest, and not merely a payment in advance to a member of a sum which will in time become due to him.

Both forms of society receive deposits from their members, and thus act as a form of savings bank. But the amount on deposit at any given time may not exceed two-thirds of the amount secured to the society by mortgages from its members. Permanent societies are now much the more common, and some of them conduct extremely large businesses.

Building Societies are also divided into unincorporated and incorporated, a division which does not correspond with that into terminating and permanent societies.

Unincorporated societies are the older form, and consist of those registered under the Act of 1836, and they cannot be formed now. The Act of 1836 was repealed in 1874, but with a proviso as to existing societies. In 1894 the Act of that year compelled all societies registered after 1856 to become incorporated. Therefore the only societies which are not now incorporated are those formed between 1836 and 1856. These are a small, comparatively unimportant, and diminishing class.

The difference between the two classes is as follows. An unincorporated society cannot hold property in its own name. It has therefore to appoint trustees in whom its property vests, and all actions by and against the society have to be brought in the names of the trustees. In addition to this, the liability of the members to the creditors of the society is not limited, and they may be liable up to any amount for debts incurred by their officers. Incorporated societies, on the other hand, can hold property, and sue and be sued, and they have perpetual succession and a common seal, in the same way as a limited company. And by the Act of 1874 the liability of unadvanced members is limited to the amount paid or in arrear on their shares, and the liability of advanced members is limited to the amount payable on their shares under any mortgage or other security or under the rules of the society.

In addition to the above classes, it is possible to form a Building Society without registering it at all. But if such a society had more than twenty members it would offend against the Companies Act. The liability of the members would be unlimited, and the society would obtain none of the special privileges hereinafter set out.

Finally, a Building Society can be registered as a limited company under the Companies Act, in which case its constitution is outside the scope of this chapter. (See Chapter IV of this Part.)

Formation of a Building Society

Any three or more persons can establish a Building Society, either terminating or permanent. An application for registration is made to the Registrar of Friendly Societies. On this application a copy of the rules of the proposed society has to be submitted to the Registrar. These rules must show what the constitution of the society is to be—whether it is terminating or permanent, the terms on which unadvanced shares are issued, the manner of making advances (this must not be by ballot or on second mortgage), the method of investment of the society's funds, and a number of other matters not necessary to be set out here. If the Registrar is satisfied, he grants a certificate of incorporation, and the society then becomes a corporation, with perpetual succession and a common seal, and is entitled to commence business.

The Registrar has the power to cancel his certificate if it has been obtained by fraud or mistake, or if the society exists for illegal purposes, or has wilfully violated the provisions of the Act, or has ceased to exist.

The effect of a cancellation of registration is pointed out by the Registrar in his report for the year 1894. After such a cancellation the society

is a mere partnership, without limited liability The persons composing it are liable for all its debts. If there are more than twenty such persons, the partnership becomes illegal. Any partner could in effect rob the society, for he could withdraw and then seize the property of the society as a security for his debt. And of course the society would lose all its special privileges.

The Chief Registrar of Friendly Societies

This officer's duties have been gradually extended, until now he discharges most important functions Originally a barrister was appointed under some of the earlier Friendly Societies Acts to certify that the rules of the society complied with the statutory requirements. Gradually successive Acts have increased his duties until now he has what amounts to a general supervision over all Building and Friendly Societies.

The duties of the office are discharged by a Chief Registrar, with Assistant Registrars for England, Scotland, and Ireland. These gentlemen, in addition to having charge of the register, have power to hold investigations into a society's affairs, prescribe the form of the annual statement and account which each society has to make, and they annually prepare an abstract of all these returns for submission to Parliament. In addition, they are often called upon to act as arbitrators when disputes have arisen in a society.

The Business of a Building Society

The society is obliged to keep strictly to its business of advancing money to its members on security, and of accepting deposits. If it attempts to become a land society, or to make advances not authorized by its constitution, it is committing a breach of duty, and the officers are personally liable for any loss which may be incurred.

But although the advances must be on the security of freehold or leasehold property, personal estate may be accepted as collateral security. In England no advance may be made on a second mortgage, but this rule does not apply in Scotland or Ireland.

At one time it was common for the members to ballot for the right to have an advance made to them; but this is now forbidden in the case of societies formed since 1894.

The executors of members may borrow from the society on mortgage for the purposes of administration, but not otherwise. An infant member may not borrow.

The ordinary law as to mortgages applies, and accordingly, if the debt be not paid, the society can foreclose. (See Chapter XII of this Part.) But a society is not allowed to own land (except for its offices, &c.), and it is its duty to sell as soon as possible any land which comes into its hands in this way.

On repayment of the mortgage debt, the member is entitled to a reconveyance of the property, and (in the case of an incorporated society) this can be done by an endorsement on the mortgage deed

An important part of the business of many societies is the receiving of deposits from members, on which the society pays interest. At one time this power was unlimited, and many societies were practically bankers, and moreover were investing the deposits in very speculative securities. But by the Act of 1894 incorporated societies are now forbidden to accept on deposit any sum exceeding two-thirds of the money secured on mortgages from members.

The Statutory Rights and Duties of a Building Society

A number of special privileges and special duties are conferred on Building Societies by the various Acts. It is only necessary to mention the more important here.

Among the rights of an incorporated society are the following:—

1. The right to purchase, hire, or lease a building in which to carry on its business.

2. The power to alter its rules, on complying with certain formalities. But when a society is insolvent it cannot alter its rules so as to vary the rights of members on a liquidation.

3 The right to invest its surplus funds in trustee securities, real or leasehold securities, or by deposit in a Savings Bank.

4. The power to borrow by receiving deposits from members, which however must not exceed two-thirds of the money secured by mortgage.

5. Exemption from stamp duty. This largely reduces the expenses of formation, but does not apply to the mortgage deeds, which have to be stamped in the usual way.

Among the duties of an incorporated society are the following:—

1. It must deliver an annual statement of its affairs and an account to all its members, showing (*a*) receipts and expenditure; (*b*) effects, liabilities, and assets; (*c*) balance due on mortgage securities; (*d*) the amount of its investments. The account must be audited.

2. Copies of the statement and account must

be sent to every member, depositor, and creditor for loans, must be hung up in every office, and sent to the Registrar.

The rights and duties of an unincorporated society differ from those mentioned above in the following respects:—

1. The shares must not exceed £150 in value, nor the monthly subscription per share exceed 20s. But there is no limit on the number of shares a member may hold.

2. The property of the society must be vested in trustees.

3. The powers of investment are narrower, but, on the other hand, such a society may hold land.

4. It may lend to strangers as well as to members.

5. The exemption from stamp duty extends even to mortgage deeds.

6. The power to borrow is not regulated by statute, and depends in each case on the rules of the society.

The Officers of a Building Society

The usual officers are a board of directors (sometimes called a committee of management), a secretary or manager, and auditors. The trustees of an unincorporated society are not necessarily officers; but they are not disqualified from becoming so.

Every officer having the receipt or charge of any of the society's money must enter into a bond with a surety in such amount as the society may require.

An officer cannot buy property which the society is selling after a foreclosure. An officer can be examined on oath by any inspector appointed by the Registrar to examine into the state of the society's affairs. Every officer must on request deliver an account to the board, must pay over all money in his hands, and deliver up all books and securities.

The Secretary or Manager.—In most cases the management of the whole daily routine of the society falls on the secretary. He has to attend all meetings, keep the minutes and accounts, send out notices, conduct the correspondence and so forth. In addition to this, he is obliged by statute (1) to prepare the annual statement and account; (2) to give all notices to the Registrar; (3) to countersign the statutory receipt endorsed on the mortgages; (4) he is liable to heavy penalties if he receives any bonus or commission on the society's transactions other than his salary.

The Board of Directors.—In addition to their general duties as the governing body of the society, the directors are liable personally if the society receives loans or deposits in excess of the statutory limit, or if the society uses any but its registered name, or if the society lends on a second mortgage, and in several other cases. The directors have the right, in the event of a member dying intestate, to make payments up to £50 on behalf of his estate without taking out letters of administration.

Auditors.—These are necessary officials of a Building Society, and the rules must prescribe the method of appointing them. One at least of the auditors must be an accountant. Their duties are to attest the annual account and statement, and to inspect the mortgage deeds annually and to certify that they have done so in the annual statement.

Rights and Liabilities of Members

Anyone can be a member of a Building Society. But infants cannot vote or receive loans from the society. The relationship of the member with the society and with his fellow members is based upon the contract contained in the rules.

A member is entitled to withdraw from the society at any time by giving notice of his intention, and to require the repayment of the money paid on his shares. A society which does not contain in its rules a provision enabling members to withdraw will not be registered. After notice and repayment a member ceases to be a member and is discharged from all liability. If, during the currency of the notice, a winding-up order is made, the member is not discharged and is still liable for his share of the society's debts. If the notice has run out, but the money has not been paid, the member is still a member and is still bound by the rules. Creditors of the society will be paid in priority to him, but he will be paid in priority to his fellow members.

The liability of a member of an incorporated society for the debts of the society, in respect of any unadvanced share, is limited to the amount actually paid or in arrears on such share; and in respect of any advanced share, is limited to the amount payable thereon under any mortgage or other security, or under the rules of the society.

The liability of a member of an unincorporated society to the creditors of the society is unlimited, but, as between different classes of members, he is only liable to the extent to which payments due on his share are in arrears.

Every member is entitled to receive a copy of the annual account and statement.

A general meeting of members has powers similar to those of a general meeting of the shareholders in a limited company. It has also the

power to change the office of the society, to fix the amount of the bond to be given by officers, and to appoint a person to whom an officer shall pay over money in his charge. A three-fourths majority of the members has the power to change the name of the society and to amalgamate with another society.

On the application of any ten members the Registrar can appoint an inspector to report on the books of the society.

One-tenth of the members (or a smaller proportion in a large society) can apply to the Registrar, who may either (1) call a special meeting of the society, or (2) order the inspector to examine into and report on the affairs of the society. After the investigation the same proportion of members can apply to the Registrar to dissolve the society. If on investigation the Registrar thinks that the society cannot meet the claims of its members, he may dissolve it.

Settlement of Disputes

It has always been the policy of the law to prevent the funds of Building Societies from being wasted by litigation; and accordingly the statute provides three alternative ways of settling disputes: (1) by arbitration, (2) by reference to the Registrar, and (3) by application to the County Court. The rules of each society must provide which of these three alternatives is to be adopted; and resort to an ordinary action is not allowed in the case of internal disputes in the society.

Position of Tradesmen dealing with a Building Society

This depends on the authority of the person giving the order to bind the society. If, as would usually be the case, a contract is entered into by the secretary or other officer on behalf of an incorporated society, and such officer is acting within the scope of his authority, express or implied, and the contract is one which the society is by its constitution entitled to make, the tradesman can sue the society for his debt. If the society is insolvent he can petition to have the society wound up, and prove for his debt in the winding-up.

If the contract is one which the society has no power to enter into, it cannot be rendered liable by the act of its secretary or of anyone else. And of course it cannot be made liable if it has not, either expressly or impliedly, authorized the secretary to act as its agent. But in ordinary business transactions the law would presume that the agent acting for the society was clothed with the proper authority.

If the secretary does not contract as agent, he is personally liable on the contract. And if, as in the case mentioned above, he purports to bind the society by a contract which it has no power to make, or which it has not authorized him to make, he is also personally liable, on the ground that he has warranted himself as having an authority which in fact he has not.

In the case of an unincorporated society the tradesman can in no case sue the society, but must bring his action against the trustees. The secretary in this case would bind, not the society, but the funds in the hands of the trustees. It is thought, but the point is not free from doubt, that he cannot bind the members to pay anything more than their subscriptions, unless he has express authority from them to pledge their credit; in which latter case the members' liability to creditors would be unlimited.

The End of a Building Society

A society may come to an end in three ways: (1) by Termination; (2) by Dissolution, (3) by Winding-up.

Termination.—As has already been explained, terminating societies are founded to attain a particular object, and automatically end when that object is attained, i.e. when each member has been paid the amount to which he is entitled.

It is not possible to foretell in any given case when that time will be. It depends on the proportion of unadvanced to advanced members, on the regularity with which advanced members pay their redemption money, and on the liabilities of the society. But as soon as the society has sufficient money in hand, after discharging all its liabilities, to pay off all the members, each member receives his share and the society ends.

Dissolution.—Building Societies may be dissolved in three different ways. Firstly, by the Registrar, after making the investigations mentioned above; secondly, by provisions in the rules of the society; thirdly, by a deed of dissolution. In the latter case three-fourths of the members, holding two-thirds of the shares, must consent by signing the deed. The deed must set out the position of the society and the manner in which its debts are to be provided for; and the deed must be registered in the same way as the rules are registered, whereupon it becomes binding upon the whole society.

Winding-up.—By the Act of 1894, all Building Societies, whether incorporated or unincorporated, are brought within the provisions of the Com-

panies (Winding-up) Act (now Part IV of the Companies Consolidation Act, 1908), and can be wound up, either voluntarily, under the supervision of the Court, or by the Court, in the same way as a limited company. (See Chapter IV of this Part.)

FRIENDLY SOCIETIES

Although the history and constitution of Friendly Societies are of considerable interest as a phase in the social development of the country, it is not proposed to deal with them at any length here, inasmuch as the subject is not one with which a business man is likely to be much concerned. Friendly Societies are very ancient institutions, and are supposed to have originated in burial clubs. They first come into prominence in English law in 1793, when an Act was passed to encourage these "Societies of Good Fellowship", as they were then called. Although upwards of twenty Acts have been passed since then, the privileges granted to Friendly Societies in 1793 are very similar to some of those they enjoy now, and include exemption from fees, summary methods of proceeding against defaulting officers, and priority of claims on the death or bankruptcy of their officers.

In modern times Friendly Societies have increased greatly in number and wealth, and form now the chief method by which the best members of the working class insure themselves against loss through sickness, death, old age, &c. The Manchester Unity of Oddfellows and the Ancient Order of Foresters, the two largest societies, have each of them upwards of three-quarters of a million members; and in all more than six million people belong to the societies, which have an aggregate capital exceeding £50,000,000.

All the numerous acts dealing with Friendly Societies were consolidated by an Act passed in 1896, which, as amended by an Act of 1908, now forms a code for the governance of these societies.

A Friendly Society is not a corporation. It is an association which, by virtue of special legislation, is enabled to enjoy certain privileges. But it is not a legal unit like an incorporated building society or a limited company. It cannot hold property nor bring an action; and trustees have to be appointed in whom the property of the society vests, and who can sue and be sued on its behalf.

Different Kinds of Friendly Society

The law recognizes five different kinds of Friendly Society, each of which is defined in the Act.

They are:—

1. *Friendly Societies Proper.*—These are societies having all or any of the following objects:—

(*a*) Relief in sickness, widowhood, old age, and orphanhood.

(*b*) Payments on births and deaths.

(*c*) Payments on distress arising through loss of employment, sickness, &c.

(*d*) Endowments.

(*e*) Insurance of tools.

(*f*) Guaranteeing the officers of other Friendly Societies.

2. *Cattle Insurance Societies* are societies insuring against loss by death of cattle, swine, or horses.

3. *Benevolent Societies* are allowed to register under these Acts, and such registration is useful as a protection to their funds. They are defined as societies for any benevolent or charitable purpose, and include any society established to provide benefits for any persons other than the members and their families.

4. *Working Men's Clubs* are societies for social intercourse, mutual helpfulness, mental and moral improvement, and rational recreation.

5. *Specially Authorized Societies.*—Many different classes of society have been registered in this division by means of a special authority from the Treasury, and in many cases such registration forms a valuable alternative to registration under the Companies Act.

Only such of the provisions of the Acts apply to these societies as are specially dealt with on their Registration, and some duties, such as the obligation to hold a quinquennial valuation, are nearly always omitted. Among the more important of such societies are those formed—

(*a*) To create by subscription a fund to be lent to or invested for members.

(*b*) To assist members who are out of employment.

(*c*) To protect and give legal assistance to members of particular trades.

(*d*) To promote agriculture.

(*e*) To establish a savings deposit.

(*f*) To encourage the game of quoits.

(*g*) To promote literature, science, and the fine arts.

(*h*) To promote a knowledge of music.

(*i*) To enable persons of the Jewish religion to celebrate Passover.

(*j*) To encourage the riding of bicycles.

Formation of a Friendly Society

In order to get registered a Friendly Society must have at least seven members and a secretary An application for registration can then be made, and with it there must be deposited a copy of the rules and a list of the trustees and officers of the proposed society.

No society will be registered which contracts with any person for the assurance of an annuity exceeding £50 per annum, or a gross sum exceeding £200.

The rules must set out the name, address, and objects of the society, and the method of altering rules, appointing officers, investing funds, keeping accounts, the settlement of disputes, and various other matters. If the Registrar is satisfied, he sends an acknowledgment of registration, and the society can then commence operations under the protection of the Acts.

Friendly Societies may consist of a single society, or may have a central body with a number of branches. The latter class are called "affiliated". In such cases the central body has a considerable amount of control over the branches, although each of the latter have their separate fund.

There is a class of society called "dividing" societies, which are very popular in some parts of the country. In these the members pay a subscription to provide a fund for sick pay, &c.; but at the end of each year the surplus of the fund is divided among the members, and the society starts again for the next year. These societies have this disadvantage, that, as the members become older, they find it harder to keep the fund up, and it is therefore likely to break down just at the moment when its members need it most.

The Chief Registrar of Friendly Societies

The nature of the Registrar's office has already been explained. He keeps the register of Friendly Societies and compiles tables of mortality and sickness for their guidance. He makes an annual statement to Parliament. He also has the power, on the application of a certain proportion of the members, to hold an investigation into the position of a society; and if he is of opinion that the society is insolvent or that the rates of contribution are not sufficient to provide the benefits promised, he may dissolve the society.

The Statutory Privileges of a Friendly Society

So soon as the society receives an acknowledgment of registration it is clothed with certain statutory privileges. The chief among these are the following:—

1. It has a priority of claim over other creditors on the death or bankruptcy of any of its officers, or in the event of execution or other process being issued against them.
2. It has the right to transfer stock by order of the Registrar.
3. It is exempted from certain stamp duties.
4. It may subscribe to hospitals and other similar institutions in order to secure benefits for its members
5. It is exempted from payment of income tax.
6. It may amalgamate with another society, and may turn itself into a limited company.

The Statutory Duties of a Friendly Society

These include the following:—

1. It must have a registered office.
2. It must make annual returns of its position to the Registrar.
3. It must have its books audited annually.
4. It must, in every fifth year, make a valuation of all its assets and liabilities. This only applies to Friendly Societies proper, and does not affect Cattle Insurance, Benevolent or Specially Authorized Societies, or Working Men's Clubs.
5. It must cause copies of its balance sheets and valuation to be hung up in its office.
6. It must have trustees, in whom the property of the society vests. There need not be any formal conveyance of the property to the trustees. So soon as a new trustee is appointed the property vests in him.
7. There are special provisions in the Acts as to payments on the death of children. At one time this practice led to grave abuses. It is now provided that no sum greater than £6 can be insured on the life of a child under five years old, nor greater than £10 on a child under ten years. Certificates of the death of children have to be specially endorsed, and a heavy fine can be incurred for any breach of these regulations.

Position of Members of a Friendly Society

The position of members is regulated by the rules of the society. It is thought that, in the absence

of express provision, the only authority they give to their officers is to spend the funds of the society, and that the officers cannot pledge the members' credit for any greater amount than is due from them to the society. And, as subscriptions to a Friendly Society are voluntary, there would usually be nothing owing.

Societies may make rules giving themselves power to fine their members.

In the event of the society becoming insolvent, a certain proportion of the members may petition the Registrar to enquire into the affairs of the society.

Five-sixths in value of the members may dissolve the society if all those receiving any payment from the society consent, or have their claims satisfied.

A member who is over sixteen years of age may make what is called a nomination. That is to say, he may, by writing delivered to the society, nominate any person or persons to whom any money payable by the society to the member shall be paid on the death of the member. A nomination must not be for any greater sum than £100. If it is properly made, it is the duty of the society to give effect to it.

A member is entitled to be supplied with copies of the rules, on payment of one shilling, and with copies of the annual statement.

Members have a limited right to inspect the books of the society.

A member may not receive from a society or branch any greater sum than £300, or any greater annuity than £52.

A member's subscription is purely voluntary, and cannot be recovered by legal process.

Members of "collecting" societies have further rights, which are dealt with below.

Position of Tradesmen Dealing with a Friendly Society

Generally speaking, the officials of the society would only be authorized to spend the funds of the society either in the hands of or due to the trustees. So that in making contracts the officials would be impliedly contracting with reference to that fund, and that is the fund to which the tradesman would have to look. If the officials go beyond the scope of their authority they are personally liable. The reasons for this have already been given in the section dealing with Building Societies.

"Collecting" Societies

Special restrictions are placed on the operations of these societies. They are usually life and sickness insurance societies, whose members are of the very poorest class in the community. The members constantly fall in arrears with their payments; and the societies therefore employ collectors who go from house to house collecting subscriptions. A Royal Commission reported so unfavourably on these societies, that a special Act (the Collecting Societies and Industrial Assurance Companies Act, 1896) was passed to put them on a better footing. This Act applies to all societies receiving contributions by means of collectors more than ten miles from their registered office, and in the case of an Industrial Assurance Company, at less periodical intervals than two months. Such a society, unless specially exempted—

(1) Must furnish every member with a copy of the rules and a printed policy for one penny each;

(2) Cannot enforce forfeiture of a policy or benefit without fourteen days' notice;

(3) Cannot transfer a member to another society without his written consent;

(4) Must hold a general meeting once a year. And there are various other minor restrictions.

The End of a Friendly Society

A Friendly Society may come to an end in three ways.

1. By cancellation of its registration.
2. By voluntary dissolution.
3. By dissolution on insolvency.

1. The Registrar may cancel the registration on proof that the acknowledgment had been obtained by fraud or mistake, or that the society exists for an illegal purpose, or has wilfully violated the provisions of the Acts, or has ceased to exist. Instead of cancelling, he may suspend the registration for any period not exceeding three months.

2. A society may dissolve voluntarily with the consent of five-sixths in value of its members, and of all those receiving any relief annuity or benefit, unless the claims of all such persons are satisfied.

3. The Registrar may, on the application of a certain proportion of the members, dissolve the society compulsorily and direct how the funds are to be divided, where, after an investigation, he finds either that the society is insolvent or that its subscriptions are not sufficient to provide the benefits promised.

CO-OPERATIVE SOCIETIES

Co-operative Societies were started with the view of enabling the working classes to purchase their food and clothing cheaply by becoming their own merchants and producers. The system usually adopted is this. A store is opened by the members of the society, and is managed by a committee of them. The store only sells goods to members, and at stated intervals the profits are divided amongst the members in proportion to the amount of their purchases. This system, originally started in a very small way by the weavers of Rochdale, has grown to enormous dimensions, and there are now over two thousand societies, selling goods of the value of one hundred million each year. (See also Part I, Chapter II.)

There are several other forms of Co-operative Societies besides "stores". There are some banking societies, of which the members are the smaller stores, who thus act as their own bankers There are also manufacturing societies, societies dealing in land, and many other varieties. And in crowded districts, where there are many Co-operative Societies, the societies sometimes unite to form a Wholesale Society, which supplies the stores with goods.

In addition to this, "producing" societies have occasionally been formed, the object of which is to enable a number of workmen to combine together to sell the produce of their labour without the intervention of a middleman. These differ from distributing societies in this respect, that their profits are divided, not amongst the purchasers, but amongst the producers. In one case a number of colliers bought a coal mine and sought to work it in this manner for their mutual benefit, but, in England at any rate, these experiments have not been successful.

The law on this subject is regulated by the Industrial and Provident Societies Act of 1893. This Act deals with "any society for carrying on any industry, trade, or business, including dealings of any description with land". But no society can be registered under this Act in which any member is allowed to hold shares exceeding £200 in value.

Formation of Co-operative Societies

These societies are formed, in much the same way as a Friendly Society, by any seven persons depositing a copy of the rules with the Registrar. And in general the regulations as to Co-operative Societies so nearly resemble those as to Friendly Societies that it is only necessary to mention them where they differ. The chief difference is that, by registration, a Co-operative Society becomes a corporation. It need not therefore have trustees, but can hold property and sue and be sued in its own name. And the liability of the members is limited.

The Privileges of a Co-operative Society

On registration the society obtains these privileges.—

1. It is a body corporate with limited liability.
2. The members are bound by the rules.
3. Money due from members may be recovered as a debt in the County Court.
4. The society has a lien on a member's share for the amount of any money he owes the society.
5. It has a limited right to exemption from income tax.

It should be noticed that the exemption from stamp duty given to Friendly Societies is not extended to Co-operative Societies.

The Duties of a Co-operative Society

The most important duties are the following:—

1. The society must have the word "limited" as the last word of its name.
2. It must have a registered office.
3. It must have its books audited at least once a year.
4. It must make annual returns to the Registrar, must supply members with copies of the return, and hang up one copy in its office.
5. It must give to members a limited right to inspect its books.
6. In the case of a banking society, the rules must provide that none of the capital is withdrawable.

The Position of Members

The position of members is in many respects similar to that of members of a Friendly Society, but their liability is limited in the same way as in the case of a company registered under the Companies Act, and their share in the society may not exceed £200. They have the same right of "nomination" as the members of a Friendly Society.

The Position of Tradesmen

The position of tradesmen dealing with a Co-operative Society is exactly the same as in the case of an incorporated Building Society.

The End of a Co-operative Society

There are two ways in which a Co-operative Society may come to an end. 1. It may be dissolved by a deed of dissolution. This method can only be adopted if three-fourths of the members consent. 2. It may be wound up under the Companies Act in exactly the same way as if the society were a limited company. (See Chapter IV of this Part.)

CLUBS

The constitution of clubs is not regulated by statute, and in law a club is not a legal unit, but consists merely of a number of persons whose relations to each other and to strangers are governed by the ordinary law of contract.

This statement of the law does not apply to Working Men's Clubs, which are a form of Friendly Society, nor to club companies, which are companies registered under the Companies Act and in no respect different from other limited companies.

The clubs with which we have now to deal are of two kinds—members' clubs and proprietary clubs.

Members' Clubs

In these the clubhouse and other property belong to the body of members for the time being. Each member is a part owner of the property. Consequently when a member has his dinner in the club, there is no sale to him of the food he consumes. He is merely exercising his right to take out a share of the common property and replace it with an equivalent amount of money. But although he is a part owner, the member is not entitled to take out his share (except on payment) until the club is dissolved. In that case, after all debts have been paid, the remaining property is divided amongst the members.

An agreement to join a Members' Club is a contract between the candidate and the other members. The terms of this contract are contained in the rules of the club.

The property of the club is usually vested in trustees, who hold it on trust for all the members.

The property of the club can only be alienated by the consent of all the members, except for purposes incidental to the proper control and management of the club. In one case a club had won a prize in a curling competition, and it was proposed to present this prize to the captain of the team. Certain members objected, and it was held that unless all the members consented the club property could not be given away in this fashion.

The rules of a club can only be altered if there is a provision in the rules permitting such alterations, or if all the members consent. Consequently, if the rules fix the subscription and there is no power to alter the rules the subscription cannot be raised as regards present members, even if it is in the interest of the club that the increase should take place and the majority of members support it.

Although he is a part owner, a member who steals the club property is guilty of larceny.

Proprietary Clubs

In these the property of the club belongs to the proprietor. All subscriptions and profits belong to him. All losses are borne by him The members are mere licensees, i.e. they are entitled to enter the club by virtue of their contract with the proprietor. They are in no sense owners, but their contract prevents them from being trespassers. When a member has his dinner in such a club, there is a sale of goods to him, and he can be sued by the proprietor for the price.

If the proprietor excludes a member from the club, the member cannot insist on entering. But he can sue the proprietor for his breach of contract, and in a proper case would recover damages.

The contract between a member and the proprietor is contained in the rules, and these can only be altered by the proprietor if there is a provision in them entitling him to do so. So that if there be no such provision, he cannot raise the subscriptions during the currency of a year. But of course he can take up the position that he will not carry on the club at all after the end of the year for which subscriptions have been paid unless the members consent to an increase. In that case the members might be able to sue him for breach of contract, if the rules contained a provision that in return for the entrance fee he undertook to carry on the club for a specified time.

Expulsion from Clubs

The foundation of the jurisdiction of the Court in these matters is the members' right of property. Consequently where a member is expelled from a Proprietary Club, the Courts cannot reinstate him, for no right of property is interfered with. The member's only right is to sue the proprietor for damages for breach of contract. In

the case of a Members' Club, the Courts will see that a member is not unfairly deprived of his property, and will insist that proceedings taken to expel a member are conducted in accordance with the principles of natural justice.

The rules usually provide a power to expel. In such cases the method of expulsion laid down in the rules must be strictly complied with, and the proceedings must be conducted honestly and *bona fide*. The member must be given a fair hearing. If these conditions are fulfilled, the Court will not interfere, although it may think that the club came to a wrong decision, and although the strict rules of evidence have not been followed. But if the Court thinks that the member has been unfairly and improperly treated, it will compel the club to reinstate him. And in the absence of rules regulating the procedure on expulsion, the member must be given notice of the charge against him and must be given a fair hearing, and the decision against him must be arrived at in good faith and for the benefit of the club as a whole.

The Contracts of Clubs

In the case of a Proprietary Club, all contracts with tradesmen are made by or on behalf of the proprietor. He is the only person to sue or be sued, and no difficulty arises.

In Members' Clubs, the position is more complicated. Strictly speaking, there is no such thing as a contract by a Members' Club, which, as explained above, is not an entity at all. Any tradesman who has supplied goods must look to the person who gave the order and to those who authorized it to be given. The person who actually gives the order is usually the secretary or steward, and the question of who is bound by such order depends on the ordinary law of principal and agent (see Chapter II of this Part). In applying this law in any particular case, we have to consider the position of (1) the person who gave the order; (2) the committee; (3) the members.

1. The person giving the order is not personally liable if he contracts as agent and acts within the scope of his authority, so that the secretary of a club who buys provisions in accordance with the instructions of the committee and tells the tradesman that he is acting on behalf of the committee does not incur any personal liability. But if he goes outside his instructions it is otherwise. Thus, in the case of a coal club formed to buy coals for cash, the secretary has no authority to buy coals on credit, and if he does so, he is personally liable as having warranted himself to have an authority which in fact he has not.

2. In the case of a committeeman, the question is, what conduct on his part is necessary to fix him with liability. If the committee authorize the secretary to enter into a contract, those members of the committee are liable who concur in the giving of the instructions or who subsequently ratify them. In the case of an individual committeeman the question of what amounts to concurrence is often a difficult one to determine; but generally speaking he would be liable if he holds himself out by taking part in the dealing—for instance, by signing cheques, or by being present when the instructions are given. But the mere fact that he is a member of the committee at the time the order is given is not sufficient—and in the case of a provisional committee formed for the purpose of starting a club, and before the club is actually in existence, the position is the same. Mere membership of such a committee is not enough to make a man liable. He must in some way take part in or ratify the transaction in question.

3. In the case of the general body of members, the rules very often provide the extent to which an agent can bind the club. But if the rules are in the usual form, there is no liability on members to pay anything beyond their subscriptions. Where the officials or committee of a club are in the habit of buying the stores from particular tradesmen to the knowledge of the members, they are generally speaking the members' agents to expend the fund raised by the subscriptions and entrance fees, but have no power to pledge their credit beyond that sum. The leading case on this point arose on the dissolution of the Westminster Reform Club. Each member was called on to pay a share of the club's debts, and some refused to pay. The plaintiffs were tradesmen who had supplied goods on the order of the committee; and the goods had been used by the members. The rules provided (as the rules of nearly all clubs do) for the payment of an annual subscription, and for payment in cash for all goods supplied to members. It was held that the members were not liable, on the ground that as they had by their subscriptions provided a fund for the committee to spend, the committee had authority to spend this sum, but not to pledge the members' credit in excess of it.

To sum up the position—*Flemyng v. Hector* (1836): 1. In the ordinary case of orders given by the secretary or steward on behalf of the committee, such of the committee as took part in the transaction are the proper people to sue. They would pay first of all out of the club funds, but if these are not sufficient, they must pay out of their own pockets. 2. If the secretary or steward has given orders which he had no authority (either

express or implied) to give, he is personally liable. 3. The general body of members who have paid their subscriptions are not liable, except in very exceptional circumstances.

It is hardly necessary to add that no one, whether official, committeeman, or member, can escape any liability he may have incurred by resigning from the club.

The Licensing of Clubs

The Licensing Act, 1902, imposes on the secretary of any club having a clubhouse where intoxicating liquor is sold the duty of registering the club. The register is kept by the clerk to the justices of the petty sessional division in which the club is situated. It contains particulars as to the names of the officers, the number of members, hours of opening, method of election, &c. The justices may strike any club off the register if (*inter alia*)—

(1) There is frequent drunkenness on the premises;

(2) Non-members are habitually permitted to get liquor;

(3) The supply of liquor is not under the control of the members;

(4) Persons are habitually admitted as members without there being forty-eight hours interval between their nomination and election.

This Act does not apply to Scotland, but similar provisions are contained in the Scotch Licensing Act of 1903.

By the Finance Act, 1910, clubs were first made to pay a duty of sixpence in the pound on the value of all liquor supplied to them. It is the duty of the secretary to supply the Inland Revenue Commissioners with a statement of the amount of liquor purchased by the club.

The End of a Club

A Proprietary Club can be dissolved by the proprietor at the end of any financial year. The members might in a proper case sue him for breach of contract, but they cannot compel him to carry on the club.

In the case of a Members' Club, if the rules provide a method of dissolution, the club may be dissolved by complying with it. If not, the club can only be dissolved with the consent of all the members, or, in an extreme case, the Court ought (it is thought) compulsorily to dissolve it if it were satisfied that the original purpose of the club had been lost sight of, or that its affairs were being dishonestly administered.

On the dissolution of a Proprietary Club, all the property continues, of course, to belong to the proprietor. On the dissolution of a Members' Club, all the property must be sold, and the proceeds, after all the liabilities have been satisfied, is divisible amongst the members in equal shares.

[AUTHORITIES.—*Wurtzburg* on "Building Societies".
Pratt on "Friendly Societies".
Wertheimer on "Clubs".]

CHAPTER VI

THE SALE AND HIRE OF GOODS

Ordinary Sales—Bailments—Hire-Purchase—Sales by Auction—Auctioneers in the United Kingdom—Weights and Measures—Sale of Goods under Special Circumstances—Note on Scots Law.

The law governing sales of goods has been codified by the Sale of Goods Act, 1893. This Act followed the lines upon which the Bills of Exchange Act, 1882, was framed, being due to the same draftsman, Sir M. D. Chalmers. It reproduced the existing statutory and case law in a codified form, and the variations in the English law were very slight. The Act applies to Scotland with certain reservations and adaptations.

ORDINARY SALES

The Contract and its Formation

A contract of sale of goods is a contract whereby the seller transfers, or agrees to transfer, the property in goods to a buyer for a money consideration, called the price. Such a contract may take place between one part owner and another, and be absolute or conditional. A contract of sale may be either a sale or an agreement to sell. A sale transfers the property in goods from a buyer to a seller. Under an agreement to sell, the transfer is to take place at a future time, or subject to some condition to be fulfilled. An agreement to sell becomes a sale when the necessary time has elapsed or the conditions have been fulfilled.

Where the consideration for a transfer of goods is not money, but consists of other goods, the contract is one of exchange and barter, not of sale. If there is no consideration at all the transaction is a gift, which must be effected either by actual delivery or by a deed.

The capacity and the authority of parties to enter into contracts of sale are regulated, like "other contracts", by the general law of contract and of agency. (See Chapters I and II and IV of this Part.) But if necessaries—which are goods suitable to the condition of life and to the actual requirements of the buyer—are sold and delivered to an infant, or to a person incapable through mental incapacity or drunkenness, a reasonable price must be paid.

Some particular kinds of goods can only be sold when special statutory requirements have been complied with—for example, alcoholic liquors, explosives (see Part I, Chapter XIII), and horses (see p. 220). Generally, however, contracts for the sale of goods of a less value than ten pounds require no formalities, but may be created either in writing or verbally, or may be implied from the conduct of the parties. But, except in Scotland, a contract for the sale of any goods of the value of ten pounds or upwards is not enforceable by action unless—

(*a*) The buyer accepts and actually receives part of the goods so sold; or

(*b*) Gives something in earnest (i.e. some coin or other token of value) to bind the contract, or in part payment; or

(*c*) Unless some note or memorandum in writing of the contract is made and signed by the party to be charged or his agent in that behalf.

If an agreement for the sale of goods is not to be performed within the space of one year from the making, it must be in writing and signed by the party to be charged, or his agent, to satisfy the Statute of Frauds.

These requirements apply to the sale of goods, either for immediate or for future delivery, whether they are in existence at the time or not. There is an acceptance of goods within the meaning of these words when the buyer does any act in relation to the goods which recognizes a pre-existing contract of sale, whether that acceptance is in performance of the contract or not: for example, if hay is delivered at the buyer's wharf, and is inspected and sampled by him, his action recognizes the contract of sale and satisfies the requirement as to formality, even though he immediately rejects the hay as not equal to sample. The acceptance need not be at the time of the contract. Goods may be "actually received" by the buyer through the seller handing them over to a carrier, or holding the goods as the bailee or agent of the buyer, and giving notice to that effect.

The "note or memorandum" must contain the names of the buyer and seller—or must sufficiently describe them—and a description of the goods, and if a price has been fixed it must be stated. It is not absolutely essential that the note or memorandum should be made at the time, but it must be in existence before the commencement of the action seeking to enforce the contract. It may be contained in more than one document, so long as such documents can be connected by internal evidence. (See Chapter I of this Part, and as to the signature of an agent see generally Chapter II of this Part.)

Any document which recognizes the existence of the contract may serve to satisfy the formal requirement—even a letter which is written to repudiate the contract. Initials, a stamp, or a mark will constitute a sufficient signature if they were intended to do so.

Goods

The subject matter of a contract may be "existing goods", "future goods", or even goods the acquisition of which by the seller depends upon a contingency, as when a seller undertakes to sell goods which may or may not exist. The term "goods" includes all chattels personal other than things in action and money, and in Scotland all corporeal movables except money. Thus, it includes emblements, industrial growing crops, and things attached to or forming part of the land, which are to be severed before sale or under the contract. But, under the term "goods", scrip, shares, bills and cheques, notes, and current coin are not included, nor things attached to land which are not to be severed therefrom, nor probably water, gas, or electricity. Goods which are owned or possessed by the seller at the time of contracting are called "existing goods". "Future goods" are such as are to be manufactured or acquired by the seller after the making of the contract of sale.

What in form may be a present sale is in fact an agreement to sell if the goods are "future goods". When there is a contract for the sale of specific goods, and the goods without the knowledge of the seller have perished at the time of making the contract, the contract is void. For example, if A contracts to sell the cargo of his ship, which happens without his knowledge to have been wrecked, the sale is void. So, too, when there is an agreement to sell specific goods—that is, goods identified and agreed upon at the time—and the goods without any fault of either party perish before the risk passes to the buyer, the agreement is avoided. The question as to when the risk passes to the buyer is dealt with later in this Chapter (see p. 215).

Price

The price may either be fixed by the contract or left to be fixed in a manner thereby agreed, or may be determined by the course of dealing between the parties, or, if not so determined, the buyer must pay a price which is reasonable, having regard to the circumstances of each particular case. It may be agreed that some specified third person is to determine the price by a valuation. If the third person cannot or does not make such valuation the agreement is avoided; but if the goods, or any part of them, have been delivered to and appropriated by the seller he must pay a reasonable price. Where such third party is prevented from making the valuation, through the fault of the buyer or the seller, the other party may bring an action for damages against the one in fault.

Conditions and Warranties

Unless a different intention appears from, the contract itself, stipulations as to time of payment are not deemed to be of the essence of the contract. Whether any other stipulation as to time is of the essence of the contract depends on the terms of the contract.

In England and Ireland, where a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may waive the condition, or may elect to treat its breach as the breach of a warranty, and not as a ground for repudiation of the contract. Whether in a contract a stipulation is a "condition" the breach of which may give rise to a right to treat the contract as repudiated, or a "warranty" the breach of which gives rise

to a claim for damages but not to a right to reject the goods and repudiate the contract, depends in each case on the construction of the contract.

The use of the term "condition" or "warranty" in the contract is not conclusive as to the nature of the stipulation. If the stipulation is collateral to the main purpose of the contract, it is a warranty, whatever it may be called; if it goes to the root of the main purpose of the contract, it is a condition. Where a contract of sale is not severable, and the buyer has accepted the goods or part of them, or where the contract is for specific goods and the property in them has passed to the buyer, the breach of any condition to be fulfilled by the seller can, apart from any express or implied term, only be treated as a breach of warranty, and not as a ground for rejection. For example, a breach of a condition to deliver common English sainfoin, by actually delivering the seed of giant sainfoin, gives the buyer a right to reject the goods. But if the buyer has resold the seed before discovering that the wrong goods have been supplied, the buyer can then only treat the breach as a breach of warranty—*Wallis v. Pratt* (1910).

In Scotland, failure by the seller to perform any material part of the contract, including the breach of a warranty, is a breach of contract, entitling the buyer within a reasonable time after delivery to reject the goods and treat the contract as repudiated, or to retain the goods and treat the failure to perform such material part as a breach which may give rise to a claim for compensation or damages.

The performance of any condition or warranty may be excused by law on grounds of impossibility or otherwise. Certain stipulations are implied on the part of the seller in a contract of sale in the absence of terms to the contrary:—

1. An implied condition that he has the right to sell the goods, or will have a right to sell them when the property is to pass.

2. An implied warranty that the buyer shall have and enjoy quiet possession of the goods.

3. An implied warranty that the goods shall be free from any charge or incumbrance in favour of any third party, not declared or known to the buyer before or at the time when the contract is made.

Conditions and warranties as to the quality of goods or their fitness for any particular purpose are only implied in the following cases:—

(*a*) Where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond to that description; and if sale is by sample as well as description, that the goods shall correspond to both sample and description.

(*b*) Under special statutes with regard to particular articles. Thus, the genuineness of a trade mark is warranted under the Merchandise Marks Act, 1887. (See Chapter XIV of this Part.)

(*c*) Where the buyer expressly or impliedly makes known to the seller the particular purpose for which the goods are required, so as to show that he relies on the seller's skill and judgment, and the goods are of a description which it is in the course of the seller's business to supply (whether he be the manufacturer or not), there is an implied condition that the goods are reasonably fit for such purpose. No such condition is implied, however, in the case of a contract for the sale of a specified article under a patent or other trade name. In a recent case an order had been given for six omnibus chassis at a certain price. It was proved that the defendants knew that the omnibuses were to be used for heavy traffic; and as they were not sold under a patent or trade name, there was an implied condition that they were reasonably fit for that purpose—*Bristol Tramways Company v. Fiat Motors* (1910).

(*d*) Where goods are bought by description from a dealer in goods of that description (whether he be the manufacturer or not), there is an implied condition that they are of merchantable quality. If the buyer has examined the goods, this condition is not implied as regards any defects which the examination ought to have revealed.

(*e*) An implied warranty, or condition of quality or fitness, may be annexed by the usage of trade.

An express warranty or condition in the contract does not negative any such implied warranty or condition unless inconsistent therewith. (See also p. 220.)

Sale by Sample

In the case of a contract for sale by sample, and a sale is by sample if there is a term in the contract, express or implied (or a usage) to that effect, the following conditions are implied:—

(*a*) That the bulk shall correspond with the sample in quality;

(*b*) That the buyer shall have a reasonable opportunity of comparing the bulk with the sample;

(*c*) That the goods shall be free from any defect rendering them unmerchantable, which would not be apparent on reasonable examination of the sample.

Transfer of Property

Where there is a contract for the sale of unascertained goods, no property in them is transferred to

the buyer unless and until the goods are ascertained. They may be ascertained by selection, delivery, or dispatch. Appropriation of the goods by one party, and assent, express or implied, by the other, is necessary. If A buys 15 pigs from B, who owns more than 15 pigs, the pigs are not ascertained until either A or B picks out 15 of them and the other assents to the selection, or has already assented by agreeing to allow any 15 pigs to be selected.

When the contract is for the sale of specific or ascertained goods, the property in them passes at such time as the parties to the contract intend it to be transferred. To ascertain this intention, regard must be had to the terms of the contract, the conduct of the parties, and the circumstances of the particular case. If no different intention appears, the general rules for ascertaining the intention as to the time when the property in the goods passes to the seller are as follows:—

Rule I.—Where there is an unconditional contract for the sale of specific goods, in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment or of delivery, or both, be postponed.

Rule II.—Where there is a contract for the sale of specific goods and the seller is bound to do something to the goods to put them into a deliverable state, the property does not pass until such thing is done and the buyer has notice of it.

Rule III.—Where there is a contract for the sale of specific goods in a deliverable state, but the seller is bound to weigh, measure, test, or do some act for the purpose of ascertaining the price, the property in the goods does not pass until such act or thing is done, and the buyer has notice thereof.

Rule IV.—When goods are delivered to the buyer on approval or "on sale or return", or on other similar terms, the property in them passes to the buyer—

(*a*) When he signifies his approval or acceptance to the seller, or does any other act adopting the transaction.

(*b*) If he does not signify either approval or acceptance, but retains the goods without giving notice of rejection, then, on the expiration of any time fixed for their return, or, if no such time is fixed, on the expiration of a reasonable time from the receipt of the goods. What is a reasonable time is a question of fact.

Where it is the intention of the parties that the property should pass only on payment, the contract is voidable if the property is obtained by fraudulent representation—*Truman v. Attenborough* (1910).

Rule V.—(1) Where the contract is for the sale of unascertained or future goods by description, and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer, or by the buyer with the assent of the seller, the property in the goods thereupon passes. Such assent may be express or implied, and given before or after the appropriation.

(2) When, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee or custodier (whether named by the buyer or not) for the purpose of transmission to the buyer, and does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract. If, however, specific or appropriated goods are delivered, but the right of disposal of the goods until certain conditions are fulfilled is reserved by the seller, then, notwithstanding such delivery, the property in the goods does not pass to the buyer until the conditions are fulfilled. Where goods are shipped, and by the bill of lading are deliverable to the order of the seller or his agent, the seller is *prima facie* deemed to reserve the right of disposal. Where the seller draws on the buyer for the price and transmits the bill of exchange and the bill of lading to the buyer together to secure acceptance or payment of the bill of exchange, the buyer is bound to return the bill of lading if he does not honour the bill of exchange, and if he wrongfully retains the bill of lading the property in the goods does not pass to him. Unless it is otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer; afterwards they are at the buyer's risk, whether delivery has been made or not. Where delivery has been delayed through the fault of either party the goods are at his risk as regards any loss which might not have occurred but for his fault. The buyer or seller may be acting as a bailee or custodier of the goods for the other party. In that case his duties and liabilities are determined by his position as bailee or custodier. (See later, p. 221, &c.)

Transfer of Title

When goods are sold by a person who is not the owner of the goods, and does not sell them with the authority or consent of the owner, the buyer acquires, as a general rule, no better title to them than the seller had, unless the owner is by his conduct precluded from denying the seller's authority to sell. But a good title is given to a buyer by one who is not the true owner of the goods if he is selling them under the provisions of the Factors Acts, or any Act which enables an apparent owner to dispose of goods as if he were the true owner; so too

in the case of any valid sale under a power of sale, such as is given to pawnbrokers over unredeemed pledges, or a sale under an order of Court. Save in Scotland, and in sales of horses, where any goods are sold in market overt, according to the usage of the market, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of any defect or want of title on the part of the seller. Where horses are sold, the special provisions as to their sale in market overt must be observed. (See p. 220.) "Market overt" is an open, public, and legally constituted market, held in the country on the special market days, for the sale of particular goods in a particular place; it does not include shops. In the city of London every day is a market day (except Sunday), and public sales in shops are sales in market overt if of the particular goods dealt in by the owner. What constitutes a "shop" depends upon the circumstances of each case. A sale in a private showroom on the first floor of a jeweller's shop is not in market overt—*Hargreave v. Spink* (1892)—and an auction room on the first floor has been held not to be a shop so as to make sales of goods by auction there sales in market overt—*Clayton v. Le Roy* (1911).

When the seller has a voidable title to the goods sold, but his title has not been avoided at the time of the sale, the buyer acquires a good title to the goods if he has bought them in good faith and without notice of the seller's defect of title. Thus, a seller who has acquired goods by fraud has a voidable title to the goods, and the person from whom he has fraudulently acquired them may get them back from him or from anyone who has obtained them from him with knowledge of the fact that the goods have been dishonestly come by. But an innocent purchaser of goods acquires a good title to them, save in one case. For if in England or Ireland goods have been stolen and the offender has been prosecuted to conviction, the property in the stolen goods revests in the true owner or his personal representative, notwithstanding any intermediate dealing with them, whether by sale in market overt or otherwise. In the case of goods obtained by fraud or other wrongful means not amounting to larceny, the property in them does not revest on conviction; but where the goods are still in the hands of the wrongdoer, the true owner may obtain them back.

Where a person has sold goods, but continues in possession of them or of the documents of title thereto, and either himself or through a mercantile agent acting for him delivers or transfers the goods or documents by way of sale, pledge, or other disposition to a third party receiving them in good faith and without notice of the previous sale, then the third party acquires a good title to the goods. In like fashion, where a person, having bought or agreed to buy goods, obtains possession of them or of the documents of title thereto, with the seller's consent, and either himself or through a mercantile agent acting for him, delivers or transfers the goods or documents to a third party under any sale, pledge, or other disposition, the third party receiving the goods acquires a good title to them if he has acted in good faith and without notice of any lien or other right over the goods of the original seller.

In England and Ireland writs of execution against a debtor's goods bind his property in them as soon as the writ is delivered to the sheriff or other officer to be executed, who thereupon endorses the time and date upon it. But no such writ prejudices the title to such goods acquired in good faith and for valuable consideration by any person without notice of the delivery of any such writ.

Performance of the Contract

It is the duty of the seller to deliver the goods and of the buyer to accept and pay for them in accordance with the terms of the contract of sale. Unless otherwise agreed, delivery and payment are concurrent conditions; the seller must be ready and willing to give possession of the goods, and the buyer must be ready and willing to pay the price. The terms of the contract, express or implied, govern the delivery. Apart from any such terms, the place of delivery is the seller's place of business, if he has one, and if not, his residence. But if the contract is for the sale of specific goods, known by both parties at the time of contracting to be in some other place, then that place is the place of delivery. Where the seller is bound to send the goods, but no time is fixed, a reasonable time is to be implied. Where goods at the time of sale are in the possession of a third party, unless delivery is effected by the transfer of a document of title, there is no delivery by the seller to the buyer unless and until such third party acknowledges to the buyer that he holds the goods on his behalf. Demand or tender of delivery must be at a reasonable hour. Unless otherwise agreed, the expenses of putting the goods into a deliverable state are to be borne by the seller.

It is the seller's duty to deliver the correct quantity of goods. Apart from any usage of trade, special agreement or course of dealing between the parties, the following are the rules upon this point:—

1. Where the seller delivers a quantity less than he contracted for, the buyer may reject the goods,

or may accept them and pay for them at the contract rate.

2. Where the seller delivers a quantity larger than he contracted to sell, the buyer may accept the goods included in the contract and reject the rest, or reject the whole If he accepts the whole, he must pay for them at the contract rate.

3. Where the seller delivers the goods mixed with goods of a different description not included in the contract, the buyer may accept the goods in accordance with the contract and reject the rest, or may reject the whole.

4. Unless otherwise agreed, the buyer need not accept delivery by instalments.

5. If the contract is for delivery by stated instalments which are to be separately paid for, and the seller makes defective deliveries in respect of one or more instalments, or if the buyer neglects or refuses to take delivery of or pay for one or more instalments, it is a question depending on the terms of the contract and the circumstances of each case, whether the breach of contract is a repudiation of the whole contract or whether it is a severable breach giving rise to a claim for compensation, but not to a right to treat the whole contract as repudiated. If there is a defective delivery of the first instalment, it may be inferred that other instalments will also be defective, and there may be an immediate right to repudiate the contract—*Millars' Karri & Jarrah Company v. Weddel* (1909).

Where, in pursuance of a contract of sale, the seller is authorized or required to send the goods to the buyer, delivery of the goods to a carrier, whether named by the buyer or not, for the purpose of transmission to the buyer, is *prima facie* a delivery to the buyer. Unless otherwise authorized by the buyer, the seller must make such a contract with the carrier on behalf of the buyer as is reasonable in the particular case. If the seller omits to do so, and the goods are lost or damaged in transit, the buyer may decline to treat the delivery to the carrier as a delivery to himself, or may hold the seller responsible in damages. Unless otherwise agreed, where goods are sent by the seller to the buyer by a route involving sea transit, under circumstances in which it is usual to insure, the seller must give such notice to the buyer as may enable him to insure the goods during their sea transit. If the seller fails to do so, the goods are deemed to be at his risk during the sea transit. Where a seller undertakes to deliver the goods at his own risk, at some other place than where they are when sold, the buyer must, unless otherwise agreed, take any risk of deterioration in the goods necessarily incident to the course of transit.

Inspection, Acceptance, and Objection

Where goods are delivered which the buyer has not previously examined, he is not deemed to have accepted them unless and until he has had a reasonable opportunity of examining them for the purpose of seeing whether they are in conformity with the contract. Unless otherwise agreed, a seller on tendering delivery of goods must, on request, afford the buyer a reasonable opportunity of examining them for this purpose.

A buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them, or when the goods have been delivered to him and he does any act in relation to them which is inconsistent with the seller's ownership; or when, after the lapse of a reasonable time, he retains the goods without intimating to the seller that he has rejected them. When goods are delivered to a buyer, and he refuses on good grounds to accept them, he is not bound, unless otherwise agreed, to return them to the seller, but it is sufficient if he intimates to the seller that he refuses to accept them.

When the seller is ready and willing to deliver the goods, and requests the buyer to take delivery, and the buyer does not within a reasonable time after such request take delivery, he is (apart from any question of the repudiation of the contract) liable to the seller for any loss occasioned by his neglect or refusal, and also for a reasonable charge for the care and custody of the goods.

Rights of Unpaid Seller Against the Goods

In this connection the term "seller" includes any person who is in the position of a seller, as, for instance, an agent of the seller to whom the bill of lading has been indorsed, or a consignor or agent who has himself paid or is directly responsible for the price. The seller is deemed to be an "unpaid seller" when the whole of the price has not been paid or tendered; or when a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has not been fulfilled by reason of the dishonour of the instrument or otherwise.

The rights of the unpaid seller over the goods when the property in them has passed to the buyer, subject to any special statutory provisions, are:—

(*a*) A lien on the goods, or in Scotland a right to retain them, for the price while he is in possession of them.

(*b*) In case of the insolvency of the buyer, a right of stopping the goods in transit after he has parted with the possession of them.

(*c*) A limited right of resale.

Where the property in the goods has not passed to the buyer, the unpaid seller has, in addition to his other remedies, a right of withholding delivery similar to and coextensive with his rights of lien and stoppage in transit where the property has passed to the buyer. In Scotland a seller may attach the goods while in his own hands or possession by arrestment or poinding; and such arrestment or poinding has the same operation and effect in a competition or otherwise as an arrestment or poinding by a third party.

Seller's Lien

Subject to the other provisions noticed, the unpaid seller remaining in possession of the goods may retain them until payment or tender of the price in the following cases:—

1. Where the goods have been sold without any stipulation as to credit.

2. Where the goods have been sold on credit and the term of credit has expired.

3. Where the buyer becomes insolvent. A person is deemed to be "insolvent" who either has ceased to pay his debts in the ordinary course of business, or cannot pay his debts as they become due, whether he has committed an act of bankruptcy or not, and (in Scotland) whether he has become a notour bankrupt or not. If the buyer's trustee tenders the price without undue delay, he is entitled to have the goods delivered to him, provided there is no agreement to the contrary.

The seller may exercise his right of lien notwithstanding that he is in possession of the goods as agent, bailee, or custodier for the buyer.

Where an unpaid seller has made part delivery of the goods, he may exercise his right of lien or retention on the remainder, unless such part delivery has been made under such circumstances as show an agreement to waive this right. Thus, in contracts for delivery by instalments where a certain period of credit is allowed, if the term of credit has expired in regard to any prior instalment, the seller may refuse to deliver any later instalment under the contract until both the amount then due and the price of the instalments not yet delivered are tendered to him.

An unpaid seller does not lose his lien or right of retention by obtaining judgment or decree for the price of the goods. He does lose such rights—

(*a*) When he delivers the goods to a carrier or other bailee or custodier for the purpose of transmission to the buyer without reserving the right of disposal of the goods;

(*b*) When the buyer or his agent lawfully obtains possession of the goods; or

(*c*) By waiver, as, for example, by assenting to a sub-sale, taking a bill for the price, &c

Stoppage in Transit

Subject to any other provision, when the buyer of goods becomes insolvent, an unpaid seller who has parted with the possession of the goods has the right of stopping them *in transitu*, that is to say, he may resume possession of the goods as long as they are in course of transit, and may retain them until payment or tender of the price. Goods are deemed in course of transit from the time they are delivered to a carrier by land or water or other bailee or custodier for transmission to the buyer, until the buyer or his agent in that behalf takes delivery of them from such carrier or other bailee or custodier. If the buyer or his agent obtains delivery of the goods before their arrival at the appointed destination, the transit is at an end. If, after the arrival of the goods at their appointed destination, the carrier or other bailee or custodier acknowledges to the buyer or his agent that he holds the goods on his behalf, and continues in possession of them as bailee or custodier for the buyer or his agent, the transit is at an end, and it is immaterial that a further destination for the goods may have been indicated by the buyer. If the goods are rejected by the buyer, and the carrier or other bailee or custodier continues in possession of them, the transit is not deemed to be at an end, even if the seller has refused to receive them back. When goods are delivered to a ship chartered by the buyer, it is a question depending on the circumstances of the particular case, whether they are in the possession of the master as a carrier or as agent for the buyer. Where a carrier or other bailee or custodier wrongfully refuses to deliver the goods to the buyer or his agent, the transit is deemed to be at an end. Where part delivery of the goods has been made to the buyer, the remainder may be stopped in transit, unless such part delivery has been made under such circumstances as to show an agreement to give up possession of the whole of the goods.

The unpaid seller may exercise his right of stoppage in transit either by taking actual possession of the goods or by giving notice of his claim to the carrier or other bailee or custodier in whose possession the goods are. Such notice may be given either to the person in actual possession of the goods or to his principal. In the latter

case the notice, to be effectual, must be given at such time and under such circumstances that the principal, by the exercise of reasonable diligence, may communicate it to his servant or agent in time to prevent a delivery to the buyer. When notice of stoppage in transit is given by the seller to a carrier, bailee, or custodier in possession of the goods, he must re-deliver the goods to the seller according to his directions and at his expense.

In cases where the bailee in possession is in real doubt as to whether or no the transit is at an end, he should interplead, otherwise he may be liable to an action for damages for conversion at the hands of the buyer or of the seller. (As to Interpleader, see Chapter XXVI of this Part.)

Resale by Buyer or Seller

Subject to what has been said, the unpaid seller's right of lien or retention or stoppage in transit is not affected by any sale or other disposition of the goods which the buyer may have made, unless the seller has assented thereto. But where a document of title to goods has been lawfully transferred to any person as buyer or owner of the goods, and that person transfers the document to a person who takes it in good faith and for valuable consideration, then, if such last-mentioned transfer was by way of sale, the unpaid seller's right of lien or retention or stoppage in transit is defeated, and if such transfer was by way of pledge or other disposition for value, the unpaid seller's right of lien or retention or stoppage in transit can only be exercised subject to the rights of the transferee.

The mere exercise of his right of lien, retention, or stoppage in transit by an unpaid seller does not rescind the contract of sale; but if, after exercising such rights, he resells the goods, then the buyer at the resale acquires a good title as against the original buyer. Where the goods are of a perishable nature, or where the unpaid seller notifies the buyer of his intention to resell and the buyer does not within a reasonable time pay or tender the price, the unpaid seller may resell the goods and recover from the original buyer damages for any loss occasioned by his breach of contract. It is doubtful whether in ordinary cases the unpaid seller can resell goods which are not of a perishable nature without notifying the insolvent buyer. But where the seller expressly reserves a right of resale in case the buyer should make default, and, on the buyer defaulting, resells the goods, then the original contract is rescinded, but without prejudice to any claim the seller may have for damages.

Actions for Breach of Contract

The right of either buyer or seller to recover interest or special damages in any case where by law interest or special damages may be recoverable, or to recover money paid where the consideration for the payment has failed, is not affected by the Sale of Goods Act. In England and Ireland interest is only recoverable when agreed upon, or—

(1) Where a bill of exchange or other negotiable instrument was to be the method of payment;

(2) Where the course of dealing between the parties or the express terms showed that both sides had agreed to interest being paid; or under special circumstances.

In Scotland the seller may be sued for the price and interest from the date of tender or payment.

Special damages arise under a contract made under special circumstances known to both parties at the time of contracting, as, for example, that the goods are required immediately or of a special quality to fulfil a sub-contract. Damages may in any case be "liquidated", i.e. agreed upon beforehand by the parties at a fixed sum.

Seller's Remedies

Where, under a contract of sale, the property in the goods has passed to the buyer, and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may maintain an action against him for the price of the goods. Where the price is payable on a certain day, irrespective of delivery, and the buyer wrongfully neglects or refuses to pay, the seller may maintain an action for the price, although the property in the goods has not passed, and the goods have not been appropriated to the contract.

Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may maintain an action against him for damages for non-acceptance. The measure of damages is the estimated loss directly and naturally resulting in the ordinary course of events from the buyer's breach of contract Where there is an available market for the goods in question, the measure of damages is *prima facie* to be ascertained by the difference between the contract price and the market or current price at the time or times when the goods ought to have been accepted, or if no time was fixed for acceptance, then at the time of the refusal to accept. If the property in the goods has passed to the buyer, the seller may bring an action for the price of the goods, or for damages for non-acceptance.

Buyer's Remedies

Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may maintain an action against him for damages for non-delivery. The measure of damages is the estimated loss directly and naturally resulting, in the ordinary course of events, from the seller's breach of contract. Where there is an available market for the goods in question the measure of damages is *prima facie* to be ascertained by the difference between the contract price and the market or current price at the time the goods ought to have been delivered, or, if no time was fixed, then at the time of the refusal to deliver.

Specific Performance

Where a contract for the delivery of specific or ascertained goods is broken, the Court may in its discretion, on the application of the plaintiff, by its judgment or decree, direct that the contract shall be performed specifically, without giving the defendant the option of retaining the goods on payment of damages. The judgment or decree may be unconditional, or upon such terms and conditions as to damages, payment of the price, or otherwise, as the Court thinks just, and the application of the plaintiff may be made at any time before judgment or decree. This right is supplementary to, and not in derogation of, the right of specific implement in Scotland, where the remedy is common.

Where the seller commits a breach of warranty, or where the buyer elects or is compelled to treat any breach of condition on the part of the seller as a breach of warranty, the buyer is not, by reason only of such breach of warranty, entitled to reject the goods; but he may (*a*) set up the breach of warranty against the seller in diminution or extinction of the price, or (*b*) may maintain an action against the seller for damages for the breach of warranty. This is subject to the buyer's right of rejection in Scotland. The measure of damages for breach of warranty is the estimated loss directly and naturally resulting in the ordinary course from the breach. If the breach of warranty is as to the quality of the goods, such loss is *prima facie* the difference between their value at the time of delivery and the value they would have had if they had answered to the warranty. The fact that the buyer has set up the breach of warranty in diminution or extinction of the price does not prevent him from maintaining an action for the same breach of warranty if he has suffered further damage.

Sale of Horses

In most respects the sale of horses is like the sale of any other commodity, but such sales are excepted from the ordinary law as to market overt. (See p. 216.) In order, therefore, to provide against the possibility of a horse having been stolen when offered for sale in the market, the formalities of two ancient statutes, of 1555 and 1589, passed to prevent horse stealing, must still be observed.

In fairs and markets a place must be appointed for the horse fair, and there must be a toll-gatherer, who must make a note of all the horses sold. Any horse must be openly exposed for at least one hour between 10 a.m. and sunset. Sellers must be known to the toll-taker, or must be vouched for. The price and colour and marks of the horse and the names and addresses of the parties must be entered in the book, and a note in writing given to the buyer. Sales not in accordance with these regulations are void, and the owner may recover a horse stolen from him which is in the hands of the buyer at any time. Even after a formal sale, if it turns out that a horse has been stolen, the owner may redeem it if he claims within six months of the time it was stolen and makes good his claim before justices by the oaths of two witnesses within a further forty days. He must tender the price paid by the buyer. The onus of showing that the formalities were observed on the sale is upon the buyer of a stolen horse.

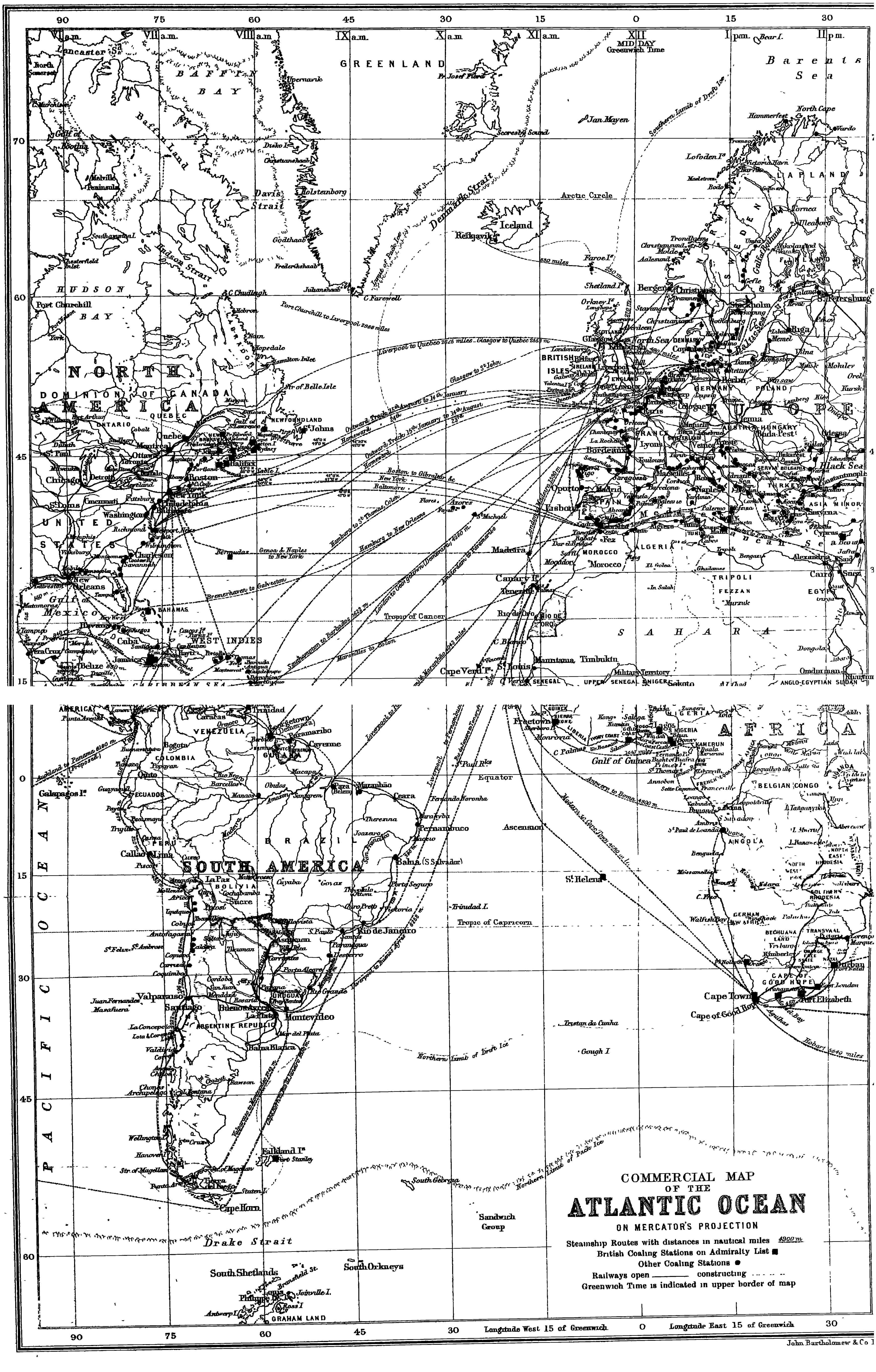
It is a common-law offence to take a glandered horse into a place of sale to the danger of the public.

In ordinary sales no warranty is implied other than the right to sell. The maxim, *caveat emptor*, applies, unless there are circumstances to show that a warranty was intended. As in other cases, a warranty of fitness may be implied when the buyer makes known the purpose for which the horse is required, or in a sale by description, or under trade usage. (See p. 214.)

The warranty must be given at the time of sale, not afterwards. The servant of a private owner has no implied authority to warrant except at a fair or public market; but the servant of a horse-dealer has, and will bind his master even if he has been told not to warrant.

A general warranty does not cover defects which are obvious, as where a horse has lost its tail; but where the seller undertakes to deliver all right at the end of a certain period, a warranty will include all defects. Where there is an express warranty the buyer is not bound to examine more closely than a prudent man might be expected to do. He has a right to rely on the warrant.

A warranty need not be in writing, though the


COMMERCIAL MAP
OF THE
ATLANTIC OCEAN
ON MERCATOR'S PROJECTION
Steamship Routes with distances in nautical miles 4900 m.
British Coaling Stations on Admiralty List ■
Other Coaling Stations ●
Railways open ——— constructing - - - -
Greenwich Time is indicated in upper border of map
Longitude West 15 of Greenwich
Longitude East 15 of Greenwich
John Bartholomew & Co.

buyer should always insist on a written one. It need not be in any special form, but should be explicit. "Sound in wind and limb", "sound and free from vice" are common forms; "sound" implying the absence of any disease which will diminish or tend to diminish the natural usefulness for proper and ordinary work.

Where horses are sold at a repository, the warranty may be limited by conditions in the sale catalogue, as where warranties given at a particular establishment were by notice on a board said to remain in force only till twelve o'clock on the day after sale, unless in the meantime a buyer sent in a certificate of unsoundness. Purchasers who are aware of such a notice are bound by it Similarly, where it is stipulated that a horse must be returned within a certain time. But a reasonable compliance with such a condition will be sufficient, as where it was notified that a horse was taken immediately ill and could not be sent back—*Chapman v. Withers* (1888) In another case it was held that where the buyer had been told by someone before he took the horse away that it did not answer the description, this did not deprive him of his right to return it within the stipulated time as not being of the description sold; nor is the right of return affected by an accident to the horse while in the buyer's possession, not due to his default or negligence.

Markets

The exclusive right to a public market may be established by immemorial user, charter, or statute Subject to this, local authorities may set up markets, levy tolls, and make regulations.

Sunday Trading

Under the old statute of Charles II, the Sunday Observance Act, 1677, no tradesman, artificer, workman, labourer, or person of a similar class may do or exercise any worldly labour, business, or work of *their ordinary callings* on the Lord's Day, works of necessity and charity alone excepted. The contract is void, and the penalty for each offence 5*s*. The occupation must be the ordinary calling of the tradesman or labourer, and not all occupations are affected by the Act A horse dealer must not sell, but a private person may sell a horse on Sunday. The Act has therefore many exceptions, and under the later Act of 1871 it cannot be put into operation without the written consent of the chief officer of police or the justices for the district.

There are other old statutes prohibiting the holding of fairs on Sundays, and the occupations of carriers and butchers, and the public crying of and travelling for the sale of goods. Generally a contract made and fully completed on a Sunday is void; and meetings of companies and public bodies could not be legally held on a Sunday. (As to factories, see Chapter X of this Part.)

The Act of 1781, which provides that any house opened for public amusement or debate for payment on Sunday is to be deemed "a disorderly house", does not apply to a place where suitable music or instruction forms the "amusement", and where free seats are provided.

BAILMENTS

Bailment is a term applied to a contract under which goods are delivered on the express or implied terms that they shall be restored to the bailor by the bailee as soon as the purpose for which they are delivered is accomplished. Bailment may be said to be of two classes, the first class being gratuitous, and the second for payment. The first class comprises deposit, which is a bailment of goods to be kept gratuitously for the use of the bailor; gratuitous loan of goods and chattels for the benefit of the bailee, and the delivery of goods to someone who undertakes gratuitously to carry them or to do something with them, which is technically known as *mandate*. The second class consists of hire of goods and hire of custody; pawn or pledge of goods or chattels as security for money borrowed by the bailor; and the delivery of goods for the purpose of work to be done to them by the bailee, to be paid for by the bailor.

In all cases of bailment, though the actual possession passes to the bailee for the time, the property remains in the bailor, the bailee having a special property in the goods which enables him to sue a third party if they are taken out of his possession. The most important question in connection with bailment is the care which the bailee must take of the goods and chattels, and this varies according to the class of contract.

Gratuitous Bailments: Deposit

In the case of deposit the bailee acts gratuitously, and he is therefore only responsible if any damage comes to the articles deposited through the want of that ordinary care which men of prudence generally exercise in their own affairs, unless the circumstances show that he offered more. It is sometimes said that a gratuitous bailee is

responsible only for gross negligence, which, after all, as the learned judge who became Lord Cranworth said, is the same thing as ordinary negligence, with the addition of the vituperative epithet. Supposing the bailor knew the bailee to be a person devoid of ordinary care, the latter would not be responsible even for his gross neglect.

By the terms of the contract the common liability may be enlarged or limited. Ordinary cases of this class of bailment arise when a customer leaves his hat or coat at a restaurant under reasonable conditions. There is then a liability on the part of the restaurateur, which it is customary to limit by notice directing in what way such articles should be taken care of. (See also Chapter XVIII of this Part.)

The acceptance by bankers of the securities of their customers for safe custody is hardly a case of gratuitous deposit, but the degree of responsibility has not yet been clearly tested. (See further, Part IV.) In such cases the depositee would clearly be liable for something less than gross negligence; while for unsolicited manuscripts sent to a magazine, the editor would only be responsible for loss through his wilful negligence. It may happen, again, that goods are received or stored in the way of trade, and no specific charge is made, yet the deposit is not entirely gratuitous; as where a printer holds stock of an author's pamphlets, the charge for printing is some evidence of indirect remuneration for storage. But liability does not ordinarily attach for the custody of goods of a special character left under ordinary circumstances. Where engraving plates of which reasonable care had been taken were removed by someone and lost, the defendants were not liable, because they were able to prove they had used the care which a reasonable man would use in the case of his own property — *Bullen v. Swan Electric Engraving Company* (1907). But the onus lies upon the person who has received goods into his custody to show circumstances disproving negligence on his part. (As to "Warehousing", see Part V.)

The bailor is not entitled to use the article, nor to part with its possession, and the care which he is to take of it will always vary with the subject-matter.

A Gratuitous Loan

In a loan of a chattel, which is for the benefit of the borrower, the borrower is answerable for any damage happening to the article lent which is due to the least neglect on his part. He would not be responsible for ordinary wear and tear, or for robbery or other unavoidable accident, and supposing the article itself had concealed faults known to the lender, the latter would be responsible for any damage which the borrower might suffer. For example, if A lends B a typewriter to be used by a skilled person, and B allows a careless and inexperienced person to use and damage it, B will be responsible. On the other hand, supposing the loan were of a machine which had a fault unknown to the borrower but known to the lender, and damage resulted in its ordinary use, the gratuitous lender would be responsible to the borrower. The use must be a proper use under the terms on which it was lent.

Mandate

Mandate differs from deposit in that the bailee undertakes to do something to the goods, as to carry or repair them. He is only responsible if he acts with positive negligence. The question of what is sufficient negligence upon which to found an action depends on the reputed skill of the person. A professional man acting gratuitously must employ a much greater measure of skill than an ordinary person doing the same act. The leading case on this subject, and all classes of bailment, is a very old one, that of *Coggs v. Bernard* (1704), in which Chief-Justice Holt laid down the rules of law which are still accepted, and in which he used the celebrated phrase that "nothing is law that is not reason". Bernard had undertaken gratuitously to remove some casks of brandy from one cellar to another, and through his negligence the contents of one of the casks was spilt. Although it was not his ordinary business, and he had nothing to gain by doing it, it was held that he had not exercised that degree of diligence in the performance of his undertaking which would have excused him from liability.

It is doubtful if in any case short of absolute necessity a mandatory may delegate the duty he has undertaken. He is in the position of a trustee; he can make no secret profit, but is entitled to be paid his actual and out-of-pocket expenses. The Courts have repeatedly declared against any custom of trade under which such an agent has claimed the right to charge a price for goods other than that which he actually paid. (See also Chapter II of this Part.)

Bailments for Valuable Consideration

The other, and commercially much more important, class of bailments comprises three contracts for valuable consideration — that is, for payment in some form or other. Although they have the technical distinctions which have already been stated, all may be treated together, in con-

nection with the well-known commercial contracts which fall under their heads.

Hire

Hire embraces what is well known as the hire of goods, but also the hire of custody—that is, contracts under which horses and cattle are put out to agistment, or goods handed to a warehouseman or wharfinger. (See further, Part V.)

When cattle are taken into agistment, the field must be reasonably fenced, or a stable must be fitted to its purpose, and the servants of the custodian must take reasonable care. Beyond this, liability does not attach, as agisters are not insurers; but knowledge of a special risk will increase their responsibility.

Hire of Goods

The contract of hire is one of the commonest in everyday business life. When goods are let out on hire, the hirer is entitled to use them, during the time for which they are let out, in an ordinary fashion. He must take such care of them as a reasonably prudent man would take of his own property. When the time comes to return the goods to their owner, they should be in substantially the same condition as when they were let out. If goods are let out under a written contract, the terms of the contract will determine the precise nature of the hirer's responsibility, subject always to the condition of the goods when let out. A hirer will not be compelled to renovate goods old or damaged when the bargain was made, even if he has stipulated to return them in first-rate order and condition, unless part of the consideration of the hiring was the repair of the goods by the hirer.

Apart from any written terms, the hirer is responsible for any loss or injury to the goods caused by his negligence or by the negligence of one of his servants acting in the course of his employment. But a hirer is not responsible for any loss or damage which he could not avoid by reasonable precautions. If, for example, a hired horse dies from natural causes, or is injured by an unavoidable accident, the loss falls upon the owner, and the cost of attendance falls upon him. If the injury arose through the negligence of the hirer's coachman driving on his master's business, the hirer must recompense the owner—*Coupé Company v. Maddick* (1891), but not if it was while driving quite outside his duties and on the servant's own business—*Sanderson v. Collins* (1904). Where horse and carriage and coachman are hired, the hirer is not responsible for the negligence of the coachman, provided that the hirer has not interfered or ordered an illegal act. A man may be the general servant of one person and the particular servant of another, it will depend upon which master had the control at the time.

A hirer may be responsible to the owner for the wrongful act of his servant, but not to a third person. If a person lends a motor car he has hired to another person, and that other so negligently drives that he causes injury to passengers and destroys the car, the hirer is not liable to the persons for their injuries, but he is to the owner of the car for the damages to his car. He must make good his liability by suing the wrongdoer. (See further as to "Carriage of Passengers", Part V.) Where a person lets out a horse for a particular journey or purpose he impliedly warrants its fitness, and the hirer is not answerable for any loss unless he deviates from the agreed journey or is guilty of positive negligence. (See also Chapter XXII of this Part.)

A hirer is not, in the absence of negligence, responsible if the thing hired is destroyed by fire or disease, or stolen by robbery. If it is stolen without violence the hirer must show that the theft could not have been prevented by reasonable care. The burden of proving that there was no negligence on his part is always cast upon the hirer when the articles hired are damaged.

If an owner lets out specific goods without any warranty that they are suitable for the hirer's purpose, no action can be brought against him by the hirer if such specific goods are not suitable. But in all cases the owner is liable for damage caused by some special defect of which he knew, but of which he allowed the hirer to remain in ignorance.

If an owner lets out goods, other than specific goods, on hire, he is responsible if they are not reasonably fit for ordinary use or for the purpose for which to his knowledge the hirer required them, unless they are only rendered unfit through some latent defect of which he was ignorant, and which he could not have discovered upon a reasonably careful examination.

When an agreement is made for the letting out of specific goods at a future date, the owner must take reasonable care not to let them deteriorate before the commencement of the hiring.

If, during the hiring, goods are damaged or destroyed through the negligence or wrongful act of a third party, the owner of the goods may bring an action to recover the damage he has sustained, and the hirer may also seek compensation for his loss of the use of the goods; or the hirer may bring an action for the whole amount of the damage caused by such negligence or wrongful act, and pay over to the owner such portion of the damages as are due to him.

If the owner transfers his interest in the goods during the hiring to some third person, the hirer is not responsible for not delivering the goods at the termination of the hiring to the new owner unless he has been authorized so to do by the former owner, or has had reasonable time to investigate the validity of the new owner's title If the person from whom the goods were hired and some other person both claim the goods, the hirer's safest course is to interplead—i.e. to get a Court of law to determine to whom they really belong. In such a case his costs will have to be paid by whichever of the claimants fails to establish his title to the goods. (See Chapter XXVI of this Part.)

Pawn or Pledge

This class of bailment is noticed in Chapter XII of this Part.

Hire of Work and Labour

The class of bailment which arises in connection with the carriage of goods and the warehousing of goods is dealt with in Part V.

A warehouseman or any carrier or any other person to whom goods are entrusted for the purpose of storage, conveyance, or work for payment, is responsible for any damage which could by the utmost skill and care have been avoided. It is common, therefore, to limit such liability by special contract, an example of which may be seen in the railway cloakroom tickets, on which are printed special terms restricting the liability of the railway company. If such terms are reasonable, and are brought to the knowledge of the person leaving the goods, the liability is controlled by the contract thus made.

Hire of work or labour differs from the hire of goods in that the owner agrees to pay for some work to be done to the goods. The work must be satisfactorily discharged, and ordinary care of the things must be taken.

Contracts and specifications provide the conditions of the contract in large matters; but in every transaction there is an implied term for the payment of price for work, and for materials required, and reasonable facility to workmen. Remuneration, when not stipulated, must be adequate to the task performed. Extras, when not provided for, must be assessed on reasonable terms in cases of dispute.

The capacity of the workman is founded on public profession. A skilled person, as, for example, an engineer, undertakes to display sufficient skill and knowledge satisfactorily to discharge his undertaking.

The right to delegate in such a contract depends on its nature. A physician must act personally; so must generally a solicitor, an auctioneer, an accountant, or other person upon whose professional standing reliance is placed.

HIRE-PURCHASE

A method of trading has grown up and widely extended under which goods are sold on what is called the Hire-Purchase system. The history of the movement shows the gradual extension of a system which at one time was confined to certain trades, and not to the best people in those trades, so that the use or the abuse of it in its early stages obtained a not very high reputation for this method of trading. But properly conducted it has now come to be recognized as having advantages for both buyer and seller, and it has been adopted by the largest houses in nearly all trades which deal with articles not of a perishable character. The hirer obtains possession but not the property. He can acquire the property by the continuance of periodical payments, or he can return the goods. As was pointed out by Lord Macnaghten in the leading case of *Helby v. Matthews* (1895), the advantages are not all on one side. "I do not see why a person fairly solvent and tolerably prudent should not make himself the owner of a piano or a carriage or anything else by means of periodical payments on such terms as those in question in the present case. The advantages are not all on one side. If the object of desire loses its attractions on closer acquaintance —if faults are developed or defects discovered— if a coveted treasure is becoming a burthen or an encumbrance, it is something, surely, to know that this transaction may be closed at once without further liability and without payment of any forfeit." Since that time the principle has become systematized under well-regulated agreements, by means of which the interests of the hirer are safeguarded, and the interests of the owner of the goods are protected against claims by third parties.

The difference between a genuine hire-purchase agreement and a mere agreement to buy on deferred payments is clearly seen by a glance at two cases. In the case of *Lee v. Butler* (1893) goods were hired on the terms that the hirer bound himself to pay £1 down, and the sum of £96 at a future date when the goods were to become his absolute property. He was not given the option

of terminating the hiring by re-delivery of the goods. He sold the goods, before the price had been paid, to a person who took them *bona fide* and without notice of the hiring. When this person was sued for the goods it was held that he had acquired a good title. There had been an agreement to buy which placed the hirer in possession of the goods within the meaning of the Factors Act, and therefore gave him, although he was not the actual owner, authority to confer a good title to the goods upon any person taking them in good faith.

In the other test case, *Helby v. Matthews* (1895), a piano was let on hire under an agreement for the payment of monthly instalments. On the payment of the last instalment the piano was to become the property of the hirer, and *the hirer had the power to terminate the hiring at any time upon delivering up the piano.* The hirer pledged the piano before the instalments were all paid, the pledger taking it in good faith and without knowledge of the agreement. It was held in the House of Lords that the pawnbroker had not acquired a good title, because the hirer was not, in the words of the Factors Act, "a person having agreed to buy" goods—that is, a person who has bound himself to buy—but a person who had the option of acquiring by continuing to pay the instalments. He was, in the opinion of Lord Herschell, no more the apparent owner of the piano than if he had simply hired it. This class of contract was described by Lord Watson as a contract of hiring, terminable at the will of the hirer, coupled with a condition in his favour for electing to retain it until he has paid the necessary number of instalments and thus made it his property. In order that the hire-purchase agreement should effect its object, there must be an option given to the hirer to return the goods and terminate the agreement; he in that case being liable only for arrears of instalments, if any. Against the owner of the goods, until the instalments are all paid, a third party does not then secure a good title. It is therefore easy to understand that since that time hire-purchase agreements have usually conformed to that which was in use by the parties in *Helby v. Matthews.*

By permission of the Hire Traders' Protection Association we are at liberty to set out a form of agreement, one of several in general use which have been drafted by eminent counsel for that association. The forms of agreement are copyright, and must not be used without the consent of the Hire Traders' Association, 27 Chancery Lane, London, W.C. (See p. 226.)

The hire-purchase agreement does not require registration as a bill of sale. Goods under such a hire-purchase agreement, although they may not be sold or pledged, are nevertheless subject to distress for rent, unless the landlord agrees in writing at the time that he will not distrain on the goods. An undertaking to that effect should therefore be obtained. Such goods cannot be taken by the sheriff in execution except to the extent of the hirer's interests, nor can they be taken under distress for rates. They may be seized, however, to satisfy land and property tax or inhabited-house duty, which attach to the property and not to the person. Such goods also in possession of anyone staying at an inn are subject to the innkeeper's lien for charges, or if sent for repair are subject to the ordinary repairer's lien. Where machinery or goods of a character which become fixed to the freehold are let on a hire-purchase agreement, there is a danger of their passing to a mortgagee of the freehold. If they become fixed to the freehold they become the property of a mortgagee who takes possession. Commercial machinery let on the hire-purchase principle should therefore, if possible, be protected against the landlord's right of distress and the claim of the freeholder, otherwise the owner will only have the ordinary remedy of suing the hirer for the agreed value.

Although the hirer is not the owner till the complete payment of the instalments, he has a property in the goods so that he may protect them against third parties. Bankruptcy in ordinary cases does not affect the ownership of goods under a hire-purchase agreement; but if the hired goods are in the way of trade or business of the bankrupt, and are goods within his reputed ownership, they may pass to the trustee under the provision that such goods in the sole possession, order, or disposition of the bankrupt in his trade or business, by the consent of the true owner, become part of the property available for distribution amongst the bankrupt's creditors. (See Chapter XI of this Part.) But this rule is rebutted in certain cases where there is an established trade custom for hired goods to be on the trader's premises, e.g. hotel proprietors, boarding-house keepers, printers, booksellers, coach-builders, furniture dealers, and other traders.

Bogus hire-purchase agreements are still common. Agreements may be drawn up to secure a loan where a bill of sale is really necessary, in which case the security is void, for although an unregistered bill of sale is good as between a grantor and grantee, a transaction which purports to be a hire-purchase agreement, and is really a bill of sale unregistered, may be avoided by the hirer himself. *Mass v. Pepper* (1905).

Inasmuch as under a properly drawn hire-purchase agreement the goods do not become the property of the hirer until the last of the instalments has been paid, selling or pawning them is a criminal

Form 100.

Memorandum of Agreement

made the . . .. day of .... 19 . .....
BETWEEN . . . .
(hereinafter called the owner), of the first part, ...
and . . . .
of ... .
(hereinafter called the hirer), of the second part.

WITNESSETH that the owner agrees to let, and the hirer agrees to hire, the article as specified on the schedule stated at the left side hereof subject to the terms and conditions following:—

The Hirer on his part agrees·

(1) To pay a first payment of £ : · on signing this agreement in consideration of the option of purchase herein granted for which credit will only be given in the event of the hirer electing to purchase the said article or paying compensation under Clause 6 hereof and in addition thereto—

(2) To punctually pay to the owner, without previous demand, the ... ... rent of . . .. for the hire of the said article commencing this date, the first of such .. . . payments to be on the . . .. day of ... ... next, and so on . . .. by .... so long as the hirer sees fit to continue the hire.

(3) To keep the said article in good order and repair, damage by fire included, but fair wear and tear excepted, subject nevertheless to Clause 6 hereof.

(4) To keep the said article under the hirer's control, and not to remove the same from above address for a longer period than . . . . . without the previous written consent of the owner, and to allow the owner, his servants, or agents to inspect the same at all reasonable times

(5) To keep the said article free and exempt from legal process.

(6) In the event of the hirer returning the said article under Clause (*a*) hereof before the expiration of . months from the date of the execution of this agreement, the hirer shall pay a further sum which with the previous payments will equal the sum of £ : : by way of compensation for depreciation in value of the said article.

(7) In case any of the said rent shall be in arrear, or in case the hirer commit any breach of this agreement or suffer any such breach to be committed, or in the event of the said article being seized or taken under colour of or in pursuance of any process of law, the owner shall thereupon without formal demand be entitled to take and resume possession of the said article (without prejudice to the owner's right to recover rent and damages for breach of this agreement up to the date of such retaking), and for that purpose full power and liberty are hereby given to the owner, his servants, agents, assigns or their agents, to enter into any house, buildings, or premises, of which the hirer may be, or appear to be, tenant, occupier, or owner, and there to search for and retake the said article.

(8) Any relaxation or indulgence which the owner may show to the hirer shall not in any way prejudice his strict rights under this agreement.

The Owner agrees that.

(*a*) The hirer may terminate the hiring at any time by returning the said article, but without prejudice to the owner's right to recover rent up to the date of such return, and damages (if any) for any breach of this agreement and compensation (if any) under Clause 6 hereof.

(*b*) The hirer may at any time during the hire become the purchaser of the said article by paying the sum of £ : : and in that event credit will be given for all previous payments.

(*c*) The hirer may become the purchaser of the said article by punctually paying the rent as aforesaid, but the hirer shall be and remain merely a bailee, unless and until the full sum of £ : : has been paid at the times and in manner aforesaid.

(*d*) Should the owner retake the said article by virtue of the terms of this agreement, the hirer shall have the right either (1) to buy the said article within .... days provided the hirer pay a sum which together with the previous payments equals the sum of £ : : and in addition pay the expenses of, and incidental to, such repossession, such payments to be made within .... days after such repossession as aforesaid; or (2) to resume the hiring provided the hirer pay arrears of hire up to the date of repossession and present a guarantor to the satisfaction of the owner, and pay the expenses of, and incidental to, the retaking and removal of the said article within ..... days after such repossession.

AS WITNESS the hands of the said parties on the day and year above named.

Hirer's Signature .. . .

Witness to Hirer's Signature ....

Address . .. .

6*d* Stamp if £5 or upwards.

THE SCHEDULE HEREIN REFERRED TO—

offence on his part if with the intention of permanently depriving the owner. A receiver who is knowingly a party to the agreement may also be prosecuted. It is doubtful if the restitution of goods can be ordered to the true owner when the bailee under a hire-purchase agreement is convicted of misappropriation.

Although a contract for the sale of goods does not require a stamp, hire-purchase agreements for goods of £5 and upwards must be stamped.

The practical advantages of the hire-purchase system and the arrangement of payment have been touched upon elsewhere. (See Part I, Chapter II.) Agreements vary with the class of goods the subject of hire, and the means and reliability of the persons with whom business is done. Glancing at the agreement for the hire-purchase, say, of a piano, it will be stipulated on the part of the hirer that he shall pay on the signing of the agreement in consideration of the option to purchase so much, and so much as periodical rent for the hire, the first instalment payable on a fixed day, others so long as the hire continues. Other stipulations are for keeping the instrument in good order and repair, for insurance, for keeping it in the hirer's own custody, and only removing it from a fixed address with the previous written consent of the owner; for the owner and his servants to have liberty to inspect the instrument at all reasonable times; for the prompt payment of all rent, rates, and taxes so as to keep the instrument free from legal process, and production of the last receipts for such payments on the demand of the owner. It is often provided that where the rent is in arrear or any breach of the agreement is committed, or the instrument itself is seized under process of law, the owner shall be entitled to take possession, with full power to enter the house or premises of the hirer, which, of course, must be a peaceable entry. It is also provided that any relaxation or indulgence on the part of the owner shall not prejudice his strict rights.

The owner agrees, first, that at any time during the hiring the hirer may terminate the agreement by returning the instrument to the owner at his own risk and cost; but in that event the owner shall be entitled to recover rent and damages, if any, for breach of the agreement up to the date of the return, and after that the hirer is exempt from further liabilities. It is usual to stipulate that at any time the hirer may, by payment of a lump sum, in which previous instalments should be taken into consideration, become the purchaser. Otherwise he may become the purchaser by paying the rent as agreed, but in the meantime he remains a bailee. Further, he may be given a right, should the owner re-take possession, to buy the instrument within a certain time by paying a certain sum and expenses, or to resume the hiring on payment of the arrears and expenses, and on furnishing a guarantee to the satisfaction of the owner.

It may be provided, where the goods are of an easily damageable character, that an additional sum shall be paid if they are returned before a certain number of instalments have been paid; and many other stipulations may properly be inserted, if the main principle is respected; namely, the agreement to hire with the option of returning the goods, as opposed to a mere agreement to buy on deferred payment.

SALES BY AUCTION

A well-recognized mode of sale, both of goods and real property, is that by auction, which in Scotland is sometimes known as roup. The term "auction" implies a sale by means of offers on increasing bids until the property is knocked down to the highest bidder or withdrawn. A system of Dutch auction—a sale by decreasing offers made by the auctioneer—is much less common.

The profession of an auctioneer has been noticed in Part I, Chapter XIII, where it has been seen that an annual licence of £10 is necessary. Certain sales may be conducted without such licence, namely, sales under the order of the Chancery Division of the High Court by persons duly appointed; sales of goods by County Court bailiffs duly authorized, and sales under similar circumstances in Scotland and Ireland; sales of goods seized under distress for rent or tithe not exceeding £20; sales under process of Court of goods under £20; sales of fish when first landed on the seashore, and of mineral ore "by ticket"; sales by pawnbrokers of unredeemed pledges of a value of 10s. and not over £10; and certain official sales under the direction of a Government Department and by receivers of wrecks. The licence must be produced on the demand of a revenue officer, and the full name of the auctioneer must be exhibited on a ticket or board in the room when he is selling.

Certain sales must take place by auction. These include sales by the sheriff of goods not exceeding £20 in value; sales under order of the County Court, and under warrant of distress issued by a Court of summary jurisdiction; sales of property on which is levied distress for taxes or which is

forfeited to the Inland Revenue; and the sale of certain goods by pawnbrokers, and hotelkeepers, innkeepers, and others exercising their right of lien. (See Chapter XII of this Part.)

An auctioneer is subject to the rules which control general agency, although he has rights and duties beyond those of ordinary agents. Like other agents he must not sell to himself, at least not unless he does it openly under powers reserved; nor is there any authority implied in him to give a warranty on behalf of his principal. He is, however, a special bailee of the goods which he is instructed to sell, and can sue any stranger who interferes with them, and has a lien upon them for his own charges.

The Auctioneer's Authority

The auctioneer's authority lasts only so long as the sale continues, although he may be specially instructed to dispose of lots afterwards in any way that may be agreed, acting then as an ordinary agent for sale. If an auctioneer exceeds his authority, as by selling below the reserve price, he does not bind his principal, but is personally liable on the contract. An auctioneer must not delegate his duties to another, but under his immediate supervision a clerk or other servant may act, even to the extent of inviting the bids or describing the property in the sale-room, so long as the auctioneer is present. When there are several partners in a firm it is common for them to assist each other; or for a clerk, himself holding an auctioneer's licence, to conduct the less-important sales. This is a matter of arrangement and business policy.

On the fall of the hammer the auctioneer is not only the agent of the seller but the agent of both parties to sign the contract and satisfy the requirements of the statutes as to writing. (See Chapter I, p. 85 and p. 212.) But a clerk of the auctioneer is not an agent on behalf of the bidder, unless he is specially authorized, as he may be, by the assent there and then given.

It was clearly shown in a case—*Bell v. Balls* (1897)—that in order to bind both parties the memorandum must be signed by the auctioneer himself immediately at the conclusion of the sale. A memorandum made a week later is not effective. It must be made at the time and be part of the transaction, and it must be a correct memorandum. A substantial error, such as the wrong date, will vitiate its effect, although the memorandum is made at the proper time.

The bargain is complete on the fall of the hammer; but property may be withdrawn from auction, or a bid may be revoked, at any time in ordinary cases (certainly in England and Ireland) before the fall of the hammer. This is due to the rule of law as to offer and acceptance. (See Chapter I of this Part.) It is expressly provided by the Sale of Goods Act, 1893, sec. 58 (2), that a sale by auction of goods is complete when the auctioneer announces its completion by the fall of the hammer, or in other customary manner. Until such announcement is made, any bidder may retract his bid. This rule holds even though in the advertisement the sale is stated to be without reserve, and although there is a condition that the bidder shall not retract a bidding. An authority to an auctioneer to sell is not revocable, if it is coupled with an interest. The authority is generally revoked by bankruptcy and other circumstances such as revoke an ordinary agency. The rules generally as to the authority of the agent —fraud, misrepresentation, mistake, negligence, secret commission—are as in the case of an ordinary agency. (See Chapter II of this Part.)

An auctioneer does not by merely acting as agent for the seller warrant the title of the property he sells, but he must see that he is acting for a person who is justified in selling. For example, when he is selling the assets of a deceased person, he must be representing the executors or administrators; and in ordinary cases he will be answerable for conversion if he sells goods without the authority of the true owner.

If an auctioneer receives notice of defective title before the sale, and he sells some lots and returns others to the person instructing him, he is liable to the true owner for the goods sold and also for the goods redelivered. But to render an auctioneer liable it must be shown that he actually dealt with the goods and delivered possession; it is not sufficient if he acted the part of an ordinary agent and merely brought two parties together.

The true owner of goods obtained by false pretences can recover against an auctioneer who in good faith and without notice has sold them and handed over the proceeds.

Reserve Price

If an auction is announced to be a sale without reserve, the highest bidder is entitled to be declared the buyer; but a sale may be notified to be subject to a reserve price, or a right to bid may be reserved expressly by or on behalf of the seller. Without such notification it is unlawful for an auctioneer knowingly to take any bid from the seller or any person employed by him. If the right reserved is to make *one* bid, and any further bids are made for the owner, the sale will be vitiated.

Where there is known to be a reserve price, even though the auctioneer knocks down the article to a buyer, the latter has no right of action against the auctioneer to compel him to enter his name as buyer either on the grounds of breach of duty or for breach of warranty of authority to accept the bid. Where the reserve price has not been reached, it is the duty of the auctioneer not to complete the sale, but to withdraw the property.

Sales of Special Goods

An auctioneer must comply with the special law with regard to the sale of certain goods, as, for example, the Merchandise Marks Act, 1887 (And see Part I, Chapter XIII.) In a well-known case—*Christie v. Cooper* (1900)—a sale catalogue contained a lot described as a "White Dresden Centre Dish". Before the sale the auctioneer was notified that there was a doubt as to the genuineness of the article, and at the sale he therefore said: "We sell it for what it is. You see what there is. What shall we say for it?" It was afterwards found that the article was not genuine, the mark having been forged. It was held that the auctioneer was not liable, that a person who had reason to suspect the genuineness of a trade mark might nevertheless have acted innocently in selling goods to which the trade mark was applied, and might be exonerated because he had acted innocently.

Advertisements

The advertisement of sale requires a good deal of care so as to avoid any misrepresentation. In the ordinary course statements are merely declaratory and do not imply a warranty. The general rule as to advertisement applies. (See Part I, Chapter XI.) The mere advertisement of a sale does not preclude the owner from withdrawing the property subsequently. Where the goods of an undisclosed principal are advertised for sale without reserve, the highest bidder is entitled to be declared the buyer, and he may sue the auctioneer; but if the principal is disclosed, the latter is liable. To avoid personal liability an auctioneer should always disclose his principal.

Conduct of Sale

The conduct of the sale is in the hands of the auctioneer, and he can control the company and preserve order in the sale-room. Any interference with the sale can be remedied by the ejection of the offending person, without undue violence.

An agreement between two persons not to bid against each other is not illegal, nor probably are what are known as "knock-outs" in themselves illegal, unless conspiracy to defraud can be shown. A skilful auctioneer will know how to deal with a ring of this description; and, in any case, where he doubts the genuineness of a bid, he could exercise his discretion and refuse it. On the other hand, the employment of "puffers"—that is, persons to make bids in the interests of the owner so as to enhance the price—is illegal, and a sale can be avoided if brought about by these means. Nor can an action by a puffer for his remuneration be maintained

Where several properties are being sold it is usual to issue an "Order of Sale". An auctioneer is liable for negligence in the conduct of the sale, and will lose his commission if through his fault a sale is rendered nugatory. It is his duty correctly to describe the goods so as to obtain their full value. He does not, however, guarantee that the bidder will complete the purchase.

Remuneration

The remuneration of an auctioneer, except in certain statutory cases, must be fixed by contract, or be inferred by custom or usage, which is always a less satisfactory method. There is a statutory remuneration for sales under distress for rent by order of the County Court and in Bankruptcy, and in cases of sale by order of the Court in the Chancery Division the remuneration is fixed by the Court. The auctioneer may be entitled to commission if the property is knocked down, although the purchaser does not subsequently complete, owing to a requisition not having been complied with, but the right in such a case will depend upon the terms on which the auctioneer was employed —*Skinner v. Andrews* (1910).

An auctioneer may be entitled to commission on a sale taking place subsequently by private treaty when the introduction was due to the auction. Such cases turn upon the peculiar circumstances and the nature of the instructions.

Sales of Goods

Sales of goods are generally conducted by a printed catalogue with conditions of sale incorporated. The written description of each lot cannot be varied by verbal statements. Where there is an error in the catalogue, therefore, an auctioneer should point it out, cancel the entry, and sell by verbal description.

The auctioneer's sale book should contain both catalogue and conditions, as it is the material evidence of the contract when the auctioneer has

signed it. It is usual for the sale book to be made up by pasting the pages of the catalogue on to one side, leaving the opposite page vacant for the buyers' names.

The auctioneer must take due care of goods entrusted to him for sale; and if he undertakes insurance against fire or to cover any extraordinary risk, he will be answerable for loss through his default.

The auctioneer is generally liable for the delivery of the goods, and hence he is entitled to sue for the price. Goods received for sale are privileged from distress.

Conditions

The Conditions of Sale of goods are generally as follows:—

1. The highest accepted bidder shall be the purchaser; and should any dispute arise between two or more approved bidders, or between the auctioneer and any approved bidder, the auctioneer may either determine the dispute himself or may put up the lot in dispute again at the highest undisputed bidding. (The vendor reserves the right to bid for and to withdraw, alter or vary, any lot or lots previously or at the time of sale.)

2. No person shall advance a less sum at each bidding than shall be mentioned by the auctioneer at the time of sale.

3. Each purchaser shall (if required) pay down immediately a deposit of .... in the pound, or such other sum as the auctioneer may name, in part payment (each deposit to be applicable to any lot or all lots purchased), and give in his name and place of abode when required; in default of which the lot or lots so purchased shall be at the disposal of the auctioneer.

4. The lots (whether genuine or authentic or not) are to be taken away with all defects, faults, imperfections, and errors of every description at the purchaser's expense and risk before ....., and the whole of the purchase money is to be paid before delivery; in cases where a buyer purchases more than one lot, the whole of the amount of the lots purchased shall be paid before any one lot is delivered; also, to prevent inaccuracy in delivery and inconvenience in the settlement of purchases, no lot may be removed during the time of sale, and no person shall be entitled to anything not described in his lots (no allowance whatsoever will be made for errors in description or quantity); the lots shall be cleared as shown at the sale; *no lots are to be transferred from one buyer to another; no cheques will be taken.* (As the whole is on view, no warranty is given or to be implied by the description in the catalogue.)

5. All lots from the time of sale are to be at the purchaser's risk, and to be liable to any expenses that may arise from their not having been cleared in accordance with the fourth condition.

6. The purchasers are to be answerable for all damage they may do to any lots or to the premises, and to pay for or properly repair the same before their lots are removed from the premises.

[7. The auctioneer shall not be personally responsible for any default on the part of either purchaser or vendor.]

8. Upon failure to comply with the above conditions the money deposited shall be forfeited; the lots uncleared within the time aforesaid shall be resold, either by public sale or private contract; and the deficiency (if any) by such second sale, together with all charges attending the same, shall be made good by the defaulter or defaulters at this present sale, and be recoverable as and for liquidated damages, but any surplus that may arise therefrom shall belong solely to the vendors. This condition is without prejudice to the right of the vendors to enforce the contracts made at this sale.

[9. The auctioneer shall be the sole arbitrator in all matters of dispute relating to these conditions, both as between the vendor and the purchasers, or between the several bidders or purchasers.]

Sales of Real Estate

Sales of real estate take place under Particulars and Conditions of Sale. The Sale of Land by Auction Act, 1867, requires that Particulars or Conditions of a sale by auction of any land should state whether such land is to be sold without reserve or is subject to a reserve price, or whether a right to bid is reserved. If it is stated that such land is to be sold without reserve, it is not lawful for the seller to employ any person to bid or for the auctioneer knowingly to take any bidding from any such person. If the sale is declared, either in the Particulars or Conditions, to be subject to a right of the seller to bid, it is lawful for the seller, or any one person on his behalf, to bid at such auction in such manner as he may think proper.

Particulars of Sale

The Particulars of Sale of real estate are the descriptive matter setting out the property to be sold either in one lot or in several, and describing its character, extent, and advantages. The Particulars must not contain a misdescription, or the purchaser will be entitled to damages or rescission

of the contract, but terms of mere commendation are not descriptive.

Essential matters to be stated are the situation and description of the property; the reserve price (if any); any existing tenancies, and whether the property is sold subject to them or not; incomings by way of rent, &c.; outgoings by way of rents, rates, and taxes or other charges, the tenure of the property, whether freehold, copyhold, or leasehold, and the times at which it can be viewed; and when possession will be given to the purchaser. The Particulars may also deal with the inclusion or non-inclusion of timber, fixtures or crops, the reservation of right on the part of the vendor to hold a subsequent sale of either furniture or stock on the premises, and other matters which arise in connection with the property. Accompanying the Particulars will generally be a plan or plans of the property. It is usual to state that the accuracy of the plans is not guaranteed.

A verbal alteration in the written Particulars cannot be given in evidence in an action, except only in defence to an action against the purchaser for specific performance of the contract. Each lot is a separate contract for which a stamped contract note must be signed.

Conditions of Sale

The Conditions of Sale (which in every case should be drafted by a solicitor, and which in almost every case require special consideration, having regard to the nature of the property and the title the vendor is able to deduce) state the terms on which the sale is to take place. Conditions and Particulars should refer to one another; and these draft Particulars are given only as an indication of the terms usually imposed and of the course taken after the auction to complete the sale.

The Conditions of Sale may be as follows:—

1. The highest bidder shall be the Purchaser, the Vendor fixing a reserve price, and reserving the right to bid up to such price by himself or his agent. No person shall advance a less sum on each bidding than shall be fixed by the Auctioneer; and if any dispute shall arise, the property shall be put up again at the last undisputed bidding, or the Auctioneer may determine the dispute.

2. The Purchaser shall, immediately after the sale, pay to the Auctioneer a deposit of £..... per cent on his purchase money, and shall sign an agreement in the form annexed hereto for the completion of his purchase in accordance with these conditions, and shall pay the remainder of his purchase money on the ..... next, at the offices of the Vendor's Solicitors .... at which time and place the purchase shall be completed, and the Purchaser paying the balance of his purchase money [and the sum payable for the tenant's fixtures under the valuation provided for by the Particulars of Sale] and interest (if any) on (both) such sum(s) and all other moneys (if any) payable under the Particulars of Sale or hereunder shall, as from that day, be let into possession of the property, all outgoings up to that day being discharged by the Vendor, and afterwards by the Purchaser, the same to be apportioned (if necessary) for the purpose of this condition, and to be paid to or allowed by the Vendor on completion. The proportion as from the date hereof of the current premium on any fire insurance policy which may be subsisting in respect of the property shall be paid by the Purchaser to the Vendor on completion, and any such policy shall (subject to the Purchaser obtaining the consent of the Insurance Company and to the purchase being completed in accordance with these conditions) be for the benefit of the Purchaser, but the Vendor shall not be bound to keep up or renew any such Policy.

3. Upon payment of the balance of the purchase money and all other moneys hereinbefore mentioned at the time and place aforesaid, the Vendor shall execute to the Purchaser a proper assurance of the premises, such assurance and every act which the Purchaser shall require for getting in or releasing any outstanding estate, term, right, or interest (if any), or for completing or perfecting the Vendor's title to be prepared, made, and done by and at the expense of the Purchaser, and the engrossment of such assurance shall be left not less than (five) days before the said ..... day of ..... next, at the office aforesaid for execution by the Vendor. If from any cause whatsoever, other than wilful default on the part of the Vendor, the completion of the purchase shall be delayed beyond the said ..... day of ..... next, the Purchaser shall, on completion, pay to the Vendor interest at the rate of £ ..... per cent per annum on the balance of the purchase money [and on the sum payable for tenant's fixtures as aforesaid] up to the day of the actual completion of the purchase, but without prejudice to the Vendor's rights under any other of these Conditions.

4. The Purchaser shall within (ten) days after the delivery to him or his Solicitor of an abstract of the Vendor's title, and whether such abstract shall prove to be perfect or not, send to the Vendor's Solicitors aforesaid a statement in writing of all his requisitions and objections (if any) arising on the Particulars or these conditions, the title, evidence of title, the abstract (which last

shall be deemed perfect if it supplies the information suggesting the same, though otherwise defective), the conveyance, or otherwise; and subject thereto the title shall be deemed accepted, and all objections and requisitions not included in any such statement sent within the time aforesaid shall be waived, and an answer to any objection or requisition shall be replied to in writing within (four) days after the delivery thereof, and if not so replied to shall be considered satisfactory, and so on with each successive reply; and time shall be deemed in all respects as of the essence of this Condition.

5. If the Purchaser shall take any objection or make any requisition, which the Vendor shall be unable or unwilling to remove or comply with, and shall not in writing withdraw the same within (four) days after being required so to do (and time shall be deemed to be of the essence of this Condition), the Vendor or his Solicitors may at any time by notice in writing to the Purchaser or his Solicitor, and notwithstanding any intermediate negotiation or litigation or attempt to remove or comply with the same, rescind the contract for sale, in which case the Vendor shall within (one week) after such notice to rescind release to the Purchaser his deposit money, which shall be accepted by him in satisfaction of all claims for interest, costs, compensation, or otherwise, the Purchaser thereupon returning to the Vendor all abstracts and other papers belonging to the Vendor which may have been supplied to him. This stipulation is without prejudice to the Vendor's rights under any other of these Conditions

6. The title shall commence as to the bulk of the property with .....

.....

The Purchaser shall assume (as is the fact) .....

.....

.....

(Special stipulations as to special parts of the property if required.)

7. The property is believed and shall be taken to be correctly described in the Particulars of Sale, and is sold subject to all quit and other rents, heriots, reliefs, manorial charges, rights of way, water and other easements (if any) charged or subsisting thereon, and no error, misstatement, omission, or misdescription contained herein or in the Particulars of Sale shall annul the sale [nor shall any compensation on either side be allowed in respect thereof].

8. The Vendor shall not be required to reconcile discrepancies between ancient and modern measurements (if any such there be), or to furnish any other evidence of the identity of the property than that afforded by the muniments of title in his possession.

9. If the Purchaser shall neglect or fail to comply with any of the foregoing conditions, his deposit money shall be forthwith forfeited to the Vendor, who may, with or without notice to the Purchaser, resell the property without previously tendering a conveyance to him, and any resale may be made by public auction or private contract at such price at such time on such conditions and in such manner generally as the Vendor may think fit, and the deficiency (if any) occurring on any subsequent sale, together with all costs and expenses attending on the same, or on or to any attempt to resell, shall, after taking into account the aforesaid deposit, immediately thereafter be made good to the Vendor by the defaulting Purchaser at this sale, and in case of non-payment thereof shall be recoverable by the Vendor as liquidated damages, and any increase in price on a subsequent sale shall belong to the Vendor, and on a subsequent sale by auction the property may be bought in.

It is also usual to print a Memorandum to be filled up on the completion of the auction as follows:—

I, ..., of ..... ., hereby acknowledge that this day I have become the Purchaser of the Property described in the within Particulars of Sale at the sum of ....., and that I have paid the sum of .. .. as a deposit and in part payment of the said purchase money to ..... (the Auctioneer), and I hereby agree to pay the remainder of the said purchase money and to complete the said purchase according to the within Particulars and Conditions of Sale.

As witness my hand this ..... day of .....

.....

Purchase money	£	:	:
Deposit paid	£	:	:
Balance to be paid ...	£	:	:

As Agents for ....., the Vendor, we hereby confirm this Sale, and as Stakeholders acknowledge receipt of said deposit of £ : :

.....

Deposit and Proceeds of Sale

The auctioneer must account for the deposit and the proceeds of sale, which he should take in cash only. There may, however, be circumstances which show it was reasonable to take a cheque; but he should run no risks.

Purchase Money

An auctioneer is generally authorized to receive only the deposit and not the purchase money, but on the sale of goods it is usual for the full payment to be made to the auctioneer; a deposit, if demanded, at the time the goods are knocked down and the balance when the goods are cleared. The deposit may be paid to the auctioneer as agent for the vendor, but he more usually receives it as stakeholder. He must then retain it until the contract has been carried out. Under circumstances which impose forfeiture upon the purchaser, which are generally provided for in the conditions of sale, such as non-completion, as well as on completion, the deposit becomes payable to the vendor. Under other circumstances, as when a vendor fails to show a good title to the goods sold, the deposit is returnable to the would-be purchaser. An auctioneer is only liable for interest on the deposit after its return is demanded, unless it is shown that he actually made interest. If the auctioneer becomes insolvent, the vendor is liable for the amount that was paid on deposit to a purchaser who was entitled to its return.

AUCTIONEERS IN THE UNITED KINGDOM

[By Sir ROBERT BUCKELL, M.A., J.P., taken by permission from his Address as President (1910) of the Auctioneers' Institute.]

The Auctioneers' Institute exists for the raising of the status of the auctioneer, and furnishing all coming auctioneers with the means and facilities for the perfect performance of their duties. The future position of the Institute is dependent upon pressing on with unabated energy the policy of the last twenty-five years, upon enrolling every good man in the ranks, upon fitting students with all technical, theoretical, and practical knowledge, and thus, growing in strength and usefulness, eventually obtaining a Royal Charter.

There are over eight thousand men practising as auctioneers in this country. The days have long passed when an auctioneer was simply an "outroper", "a rostrum man", with no other ability than to say: "Going, going, gone".

The auctioneer has become "an indispensable factor in modern civilization". To him is entrusted the sale of valuable chattels; and for this, if he is to be of service to his client and to do his client justice, he must know their class, their character, and their value He must also know something of art, as seen in the works of beauty on canvas, or in marble or china. He must know something of modern science and its applications; for all these things—paintings, drawings, china, books, curios, and all kinds of machinery—come under his hammer. An auctioneer must know and be able to catalogue them and to appraise them. An auctioneer is also employed in the laying out and developing of estates, in the valuation of property of all kinds for mortgage and other purposes, in the advising upon reserves, in assessing dilapidations and compensations, and in the assessment of property for rating purposes. He must keep abreast of all legislation, or proposed legislation, affecting land. He must be thoroughly acquainted with the law of landlord and tenant, and the laws and principles of rating, and he must have a knowledge of building and sanitation. All this kind of work is being done by auctioneers. The public employ them, trust them, rely upon them, and expect them to know and understand their business. The Auctioneers' Institute wishes to obtain a Charter for the purpose of closing the door to any and all who will not qualify themselves for these important responsibilities, so that the public may not be wronged or defrauded by inefficiency. The Institute is pressing forward its educational and examination work, and every year increases in usefulness, and in the extension of its branches.

I would appeal to every man whose life has been spent in the profession, who has garnered its fruits, and been proud of his life's work, from his love of the profession, to lend his name and influence to the carrying on of the work and making the profession more honourable in the future than it has been in the past. To do this he should associate himself with the work of the Auctioneers' Institute. This work has been laid firm and strong. The building which has been reared slowly and steadily gives evidence not only of the skill of the architects and the capacity of the builders, but that it will continue for all time, and that a society has been formed which will gather in all that is best in the profession, and make membership a distinguished honour of which to be proud.

WEIGHTS AND MEASURES

Under British law, when goods are sold by weight or measure they must be sold by imperial weight or measure, or by the metric or decimal system which is legal in the alternative. The metric system is very far from becoming general. This may be regretted on the grounds of simplicity and uniformity with foreign systems, and the compulsory adoption of the metric system has its strong advocates.

The Standards

The old yard measure, which was a copy of one found in the Tower, was destroyed in the fire at the old Houses of Parliament. A new standard yard was produced, and legalized by the Act of 1855. The Control of the Standards is now vested in the Board of Trade, as successors to the Treasury, the Comptroller General of the Exchequer, and the Warden of the Standards. The Standards Department is still in Old Palace Yard, and the Deputy Warden is the chief officer. Board of Trade standards of length have been laid down in Trafalgar Square, Westminster Hall, the National Gallery, Edinburgh, and by certain provincial corporations.

In accordance with the Act of 1878, the standard of length is the yard, being the distance between two gold plugs on a bronze or gun-metal bar kept at a certain temperature; the standard pound is the weight of a certain platinum cylinder; and 10 lb. of distilled water weighed in air under certain conditions is the gallon.

The standard of weight is the lb. avoirdupois, except for gold and silver and articles made thereof, including gold and silver thread lace or fringe, platinum, diamonds, and other precious metals and stones, to which troy weight applies, and drugs, which are measured by apothecaries' weight when sold by retail.

It is not necessary in a book of this class to set out the Tables of Weights and Measures, which are in the schedule to the Act of 1878, and are given in every book of reference. The Metric System has been detailed in Chapter VII of Part II under "France". Some new denominations have been legalized by Orders in Council.

With the exception of coal, which must be sold by weight (see p. 235), goods can be sold in the bulk without measurement, or by some means which does not require or indicate measurement, —as a glass of milk, "a small whisky"—so long as it is not represented as an amount of an imperial measure.

Where weights are used they must be the standard weights, correctly stamped and verified. The Board of Trade is authorized to legalize standards for measuring electricity, temperature, pressure, and gravities without deriving them from the imperial standards.

Weights and Measures and Inspection

The Weights and Measures Act, 1878, contains the principal law on the subject, but statutes of later date have special provisions. Uniformity is practically secured throughout the United Kingdom, with slight variations in Scotland and Ireland. The Act abolished the confusion of local weights and measures which in many places had been common, except when old names are merely used for fractions or multiples of imperial standards. The inspection and testing of weights and measures is under the control of inspectors appointed by the local authorities, but acting in accordance with the regulations of the Board of Trade.

The Inspectors of Weights and Measures are generally appointed in England and Wales by the Town Councils in Boroughs and the County Councils in Counties; in Scotland by the County Councils in Counties and the Magistrates in Burghs; and in Ireland as in England, except that the general administration and selection of inspectors is under the Inspector-General of Constabulary, though in the City of Dublin and some other urban districts in the County of Dublin the Councils appoint.

The Board of Trade certificate by examination must be held by all inspectors, who are generally members of the Police Force. Their duties are to inspect, stamp, and verify all weights, measures, and weighing and measuring machines, as required by the Board of Trade Regulations, which supersede all local by-laws. All weights, except where the small size renders it impracticable, must be stamped with their denomination on the top or side; and the capacity must be indicated on the outside of measures in legible figures and letters. It is the duty of an inspector to stamp all weights, measures, and machines found correct, except where fraud in their use is anticipated or he is otherwise controlled by the Regulations. When authorized in writing by a justice, an inspector may at all reasonable times inspect all weights, measures, and weighing machines; but these requirements only apply to weights, measures, scales, balances, steelyards, and weighing machines used for trade.

An inspector may enter any place where he has reason to believe that there is any such thing he is authorized to inspect. He may seize any unauthorized weights, measures, or instruments liable to forfeiture.

There is an Association of Inspectors of Weights and Measures, which aims at qualification by examination

Sale of Goods

Every contract, bargain, sale, or dealing made or had in the United Kingdom for any work, goods, wares, or merchandise, or other thing which has been or is to be done, sold, delivered, or carried, or agreed for by weight or measure, is deemed to be made and had according to one of the imperial, or metric, weights or measures, or some part or multiple thereof; otherwise it is void. All tolls or duties charged or collected must be similarly made on these standards

Any person who sells by any other denomination is liable to a fine of 40*s.* for each sale. Any person who prints, or any clerk of a market or other person who makes any return, price list, price current, or any journal or other paper containing price lists or prices current, denoting a greater or less measure than the imperial weight or measure, is liable to a fine of 10*s.* for every copy.

The use or possession for use for trade of any weight or measure not of the Board of Trade Standard, or the use or possession for use for trade of any weight, measure, scale, steelyard, or weighing machine which is false or unjust, subjects to a fine of £5 for the first offence and £10 for a second. The contract or bargain made by such a false or unjust weight, measure, or machine is void, and the latter are liable to forfeiture.

Fraud wilfully committed in the use of any such weights and measures or instruments exposes every party to it to a similar penalty.

Every person wilfully or knowingly making or selling or causing to be sold any such false or unjust weight is liable to a penalty of £10 for the first offence and £50 for the second.

Using, or having in one's possession for use in trade, measures or weights not verified and stamped is penalized by a fine and forfeiture of the measures. Every coin weight (not less in weight than the lightest current coin) must be stamped; the penalty for use otherwise is £50.

The forgery or counterfeiting of a stamp or wilful tampering with measures or weights is punished by a fine of £50. Knowingly using, selling, or exposing for sale such forged or counterfeited weights or measures subjects the person to a penalty of £10.

The Sale of Coal

The Weights and Measures Act of 1889 regulates the Sale of Coal (except in Scotland). (As to the Sale of Bread and other articles, see Part I, Chapter XIII.)

All coal must be sold by weight only, except where, by the written consent of the purchaser, it is sold by boatload or tubs delivered from the colliery into the works of the purchaser; the penalty is a fine of £5 for each sale made otherwise. Special provisions apply to Scotland under the Burgh Police (Scotland) Act, 1892.

Where more than 2 cwt is delivered by vehicle to the purchaser a weight ticket or delivery note must be given. On default or for the delivery of less quantity the fine is £5. Where coal is conveyed on a vehicle for delivery in bulk the tare weight must be marked on the vehicle, and frauds by drivers are provided against, under a similar penalty. The fraudulent delivery of short weight on sales of less than 2 cwt. is also punishable in the same way. Certified weighing machines must be kept in the place where coal is retailed, and any seller, purchaser, inspector, or other officer may require any coal or vehicle to be weighed. Inspectors may compel coal in ships or in vehicles for sale to be weighed, and test weights at all reasonable times.

Local authorities may make by-laws, with the approval of the Board of Trade, as to the sale of coal in their districts. By Order in Council, local exemptions from the provisions of the general Act can be made.

Local Acts of 1830 and 1837 regulate the sale of coal—including coke, cinders, culm, and cannel—in London and Westminster, and places within 25 miles of the General Post Office. The provision against misdescription applies generally under the Merchandise Marks Act, 1887, but other peculiar provisions remain. Coals sold in quantity over 560 lb. must be delivered in sacks, and tickets given to purchasers. Carriers are to weigh coals on the request of the purchaser, and small quantities always before delivery.

Sales in Scotland

In Scotland provisions are made for the supply of weighing machines and keepers; retailers must keep scales for weighing coal on delivery; with sales of ½ ton or more an account or memorandum must be delivered to the purchaser, and shown by the carter on demand to any constable; penalties are imposed for fraudulent weighing and for refusing to weigh; sales of 2 cwt. and under from carts must be in labelled bags or boxes.

A chief constable, or other constable specially appointed by him, may enter and inspect at all reasonable times places where coal is sold.

The Burgh Police (Scotland) Act, 1892, also provides against fraud in the sale of grain, hay, straw, and other commodities through false weights, and in the case of bread, except fancy bread or rolls, requires the weight to be impressed on all bread made or exposed for sale by bakers and dealers.

Ireland

The Weights and Measures Act, 1878, applies generally to Ireland. All sales by weight must be by Imperial weights, and by the mode of weighing prescribed. Standards and sub-standards are to be provided by the local authorities.

SALE OF GOODS UNDER SPECIAL CIRCUMSTANCES

The sale of certain classes of goods which must be made under special conditions has been noticed elsewhere (Part I, Chapter XIII). Sometimes the sale of ordinary goods must be made under special conditions with which a tradesman must comply. An example of this is the supply by a printer or publisher or any other tradesmen, or the supply of goods, in connection with a parliamentary or other election. The name and address of the printer and publisher must be upon all literature. The account must be sent in within a certain time after the election — fourteen days — and if not settled within the further time allowed cannot be paid except by leave of the Court. Tradesmen who knowingly receive payment in an illegal manner are liable to penalties.

NOTE ON SCOTS LAW

Sale of Horses

As in England, there are in Scotland certain peculiarities applicable to the sale of horses. The common rules apply, however, to the sale of horses, the peculiarities mentioned having reference to the implied or special warranty connected with the sale. The provisions of the ancient English statutes of 1555 and 1589 have no application to Scotland, but the Mercantile Law Amendment (Scotland) Act of 1856 and the Sale of Goods Act, including implied warranties in sales, apply to the sale of horses in Scotland. There is, therefore, in ordinary sales, no warranty implied other than the right to sell.

Sunday Trading

Bargains or engagements made on Sunday are not null in Scotland, though forbidden in England. But several statutes of the Scots Parliament enjoin the due observance of the Sabbath, and impose fines or corporal punishment on account of its profanation, though "duties of necessity and mercy" were specially exempted by the Act of 1579, c. 70. Broadly speaking, it may be said that to work at a trade or occupation, or to keep open shop on Sunday, are still illegal in Scotland. Prosecutions under the English Act of Charles II can be instituted only by or with the consent of the chief officer of police, or with the consent of two justices of the peace or a stipendiary magistrate. By the Scots Act of 1696, c. 31, sheriffs and magistrates are enjoined to put the laws against Sunday trading into execution at the instance of any private prosecutor. It may, however, be doubted whether a prosecution at the instance of a private prosecutor would now be permitted, though so recently as 1870 the High Court, in a case in which the question was raised, declined to express any opinion as to the competency of such a prosecution. No judicial acts can, in Scotland, be legally performed on Sunday, but the voluntary acts of private persons are valid and effectual though dated on a Sunday.

Bailment

In Scotland there is no generic term for the various contracts included in the English word "bailment", though the Scots law relating to these various contracts does not differ essentially, if at all, from that of England. It will be noted, however, that in Scotland a loan of money above £100 Scots (i.e. £8, 6*s.* 8*d.* sterling) can be proved only by the writ or oath of the borrower.

AUTHORITIES.—*Chalmers*, "Sale of Goods"; *Wyatt Paine*, "Bailment"; *Hart*, "Auctioneers".